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October 9, 2024

SENT VIAL EMAIL ONLY

Hope Carmichael
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RE: Our file: 24-121
Fairfield Harbour

Dear Hope:

As you know I represent a group of owners in the Fairfield Harbour subdivision.

I understand that there was a recent special meeting called for the purpose of conducting a vote on the issue of removal of four members of the Board of Directors. You have confirmed that there were 712 proper votes cast against removal and 781 proper votes cast for removal. I further understand that the Association has concluded that the vote for removal "does not pass" because the sixty-seven percent (67%) affirmative vote for removal was not achieved.

Upon review of the governing documents of the Association, the applicable law, and the documents relating to the purported recent purported amendment of the Bylaws, I have concluded that the affirmative vote required for removal is majority, or fifty percent (50%) plus one (1). Since the affirmative vote was 52.31% for removal, the motion in fact passed. It is my opinion that the recent purported amendment of the Bylaws was not conducted as per law, and thus, is a nullity. This results in the affirmative vote required for removal of a board member being fifty percent (50%) plus one (1), not sixty-seven percent (67%).

As to the purported recent amendment of the Bylaws, Resolution 2024-03 states that the amendment was by "affirmative vote of five (5) of the seven (7) Directors of the Board." It is clear that the attempted amendment was by vote of the directors. Such

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an amendment by vote of the directors must comply with N.C.G.S. § 55A-10-20 (Amendment by directors). Said statute does not contain any language that would allow the Bylaws, Declarations or Articles to alter or relax the requirements of N.C.G.S. § 55A-10-20.

N.C.G.S. § 55A-10-21 (Amendment by directors and members) is not the operative statute because no membership approval was sought. Said statute specifically requires approval by a certain fraction of members (See N.C.G.S. § 55A-10-21(a)(2)).

N.C.G.S. § 55A-10-20 states, relevant part:

The corporation shall provide at least five days' written notice of any meeting of directors at which an amendment is to be voted on. The notice shall state that the purpose, or one of the purposes of the meeting is to consider a proposed amendment to the Bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

Based on the meeting minutes/resolution from the June 28, 2024 meeting in which the Bylaws were purportedly amended, there was no five days' written notice as required under N.C.G.S. § 55A-10-20 provided. The minutes specifically indicate that the issue was presented at the meeting by motion. Failure to meet the notice requirements of N.C.G.S. § 55A-10-20 renders the purported amendment void *ab initio*. Thus, the affirmative vote required to remove the board members at the recent special meeting was fifty percent (50%) plus one (1). The vote passed and the four members were properly removed.

By this letter I hereby demand that the Board of Directors for Fairfield Harbour immediately acknowledge in writing that the recent vote to remove the four members of the Board of Directors passed, and that replacement members be put in place as per law. Furthermore, I hereby demand that the four removed members abstain from any further involvement or actions as purported members of the Board of Directors. This demand is tendered pursuant to N.C.G.S. § 55A-7-40 (Derivative proceedings).

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If the Association fails to provide said acknowledgement to me in writing on or before October 18, 2024, I will be forced to proceed with a derivative action in which I will seek a declaration from the Court as to these issues and recovery of attorney fees and costs as per N.C.G.S. § 55A-7-40(e).

Furthermore, any actions by the Board or the remaining members of the Board which are inconsistent with law will be considered *ultra vires*; thus, exposing the individual Board members to personal liability. The voice of Association has been heard through the vote of the membership. The members properly removed the four members of the Board. The Association must recognize and acknowledge this proper action and the governance of the Association must proceed consistent with this proper action of the corporation.

Sincerely, —



Wesley A. Collins

WAC/dt
cc: client