

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2277CV00553

PAUL CARDACI

vs.

BOARD OF TRUSTEES OF THE WINDGATE AT SALISBURY  
CONDOMINIUM TRUST & another<sup>1</sup>

MEMORANDUM OF DECISION AND ORDER ON THE MOTION FOR SUMMARY  
JUDGMENT BY THE BOARD OF TRUSTEES OF THE WINDGATE CONDOMINIUM  
TRUST AND ON PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The plaintiff, Paul Cardaci (“Cardaci”), is the record owner of Unit C-5 of the Windgate at Salisbury Condominium (the “Condominium”). On June 16, 2022, he filed the Original Verified Complaint (the “Complaint”) (Paper No. 1) against the defendant, the Board of Trustees of the Windgate at Salisbury Condominium Trust (the “Board”), asserting a claim for declaratory relief. More specifically, he alleged that the Board violated the Condominium’s governing documents when it established the budget and methodology for allocating the payment of common area expenses for 2022, and he requested that the court declare the Board’s actions unlawful. On July 12, 2022, the Board filed the Defendant’s Answer and Counterclaim (the “Counterclaim”) (Paper No. 9), asserting a counterclaim against Cardaci for breach of fiduciary duty. This matter is now before the court on the Motion for Summary Judgment by the Board of Trustees of the Windgate at Salisbury Condominium Trust (the “Windgate Motion”) (Paper No. 15) and Plaintiff’s Motion for Summary Judgment (the “Cardaci Motion”) (Paper No. 16). For

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<sup>1</sup> Shelia MacPherson, as President of the Board of Trustees

the reasons explained below, after hearing and review of the record, both the Windgate Motion and the Cardaci Motion will be **ALLOWED** in part and **DENIED** in part.

## **BACKGROUND**

The undisputed material facts are taken from the Board's Statement of Material Facts in Support of Motion for Summary Judgment (the "Windgate SOF") (Paper No. 15.4), Cardaci's Statement of Material Facts Relating to Motion for Summary Judgment (the "Cardaci SOF") (Paper No. 16.2), and the exhibits referenced in each which are contained in the Joint Appendix for Parties' Motions for Summary Judgment. Certain facts not set forth here may be referenced during the court's discussion of the parties' claims.

### **I. The Parties**

Cardaci owns Unit C-5 of the Condominium, which is located at 125 Beach Road in Salisbury, Massachusetts. Unit C-5 is a "cottage" unit, which was built as part of Phase I of the construction of the Condominium. Windgate SOF, para. 1; Cardaci SOF, para. 2. Cardaci is also a member of the Board, having been elected by a majority of the owners of the units constructed during Phase I (the "Phase I unit owners"). Windgate SOF, para. 2. The Windgate at Salisbury Condominium Trust (the "Condo Trust") is the organization of unit owners that governs the operation of the Condominium. The Condo Trust operates and acts through the duly elected members of the Board. Windgate SOF, para. 3; Cardaci SOF, para. 1.

### **II. The Condominium**

The Condominium is a seventy-four-unit, age-restricted community organized pursuant to the provisions of the Condominium Law, G. L. c. 183A. It was created by Master deed, dated November 7, 2003, and recorded with the Essex South Registry of Deeds in Book 22039, Page 502. Windgate SOF, para. 4; Cardaci SOF, para. 3. The Condominium was constructed in two

phases: Phase I, which involved the construction of the “cottage” units, and Phase II which involved the construction of the Villa structure (the “Villa Building”). Windgate SOF, para. 5; Cardaci SOF, para. 5. The cottage units consist of fifteen townhouse style units and the Villa Building consists of fifty-nine garden-style, apartment-type units in a three-story building. Windgate SOF, para. 6; Cardaci SOF, para. 6.

The Villa Building contains certain common area rooms, as well as an entry area, that are, by the express terms of the Master Deed, designated “Common Areas and Facilities Subject to Phase I and Phase II.” Windgate SOF, para. 7. The six common area rooms, i.e., the “amenity rooms,” located in the Villa Building are: the living room with fireplace and café, on the first floor; the fitness center and library, on the second floor; and the billiards and theatre room, on the third floor. Windgate SOF, para. 9. There is also a mail room in the Villa Building, which is considered a common area that is open for use by all residents.<sup>2</sup> Windgate SOF, para. 9. All residents, whether they occupy a cottage unit or a unit located in the Villa Building, have fobs that provide them and their guests with access to the Villa Building and the amenity rooms located therein. Windgate SOF, para. 10, 11. There are also three single-use bathrooms located in the Villa Building that are available for use by all condominium residents (and their guests) who are making use of the amenity rooms. Windgate SOF, para. 12.

There are certain expenses associated with operating and maintaining the amenity rooms for the benefit of the entire community. Windgate SOF, para. 13. For example, both the amenity rooms and the mailroom use electricity; they both require regular cleaning; they both are heated

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<sup>2</sup> Mail for all residents of the Condominium, whether they own a cottage unit or they live in the Villa Building, is delivered to the mail room located in the Villa Building.

and cooled via dedicated HVAC units; and some of these common spaces use gas, have running water, and require trash disposal. Windgate SOF, para. 14.

### **III. The Trustees**

The Board consists of seven trustees. Windgate SOF, para. 15; Cardaci SOF, para. 7. Three of the seven trustees are elected by the Phase I unit owners (the “Phase I Trustees”). Windgate SOF, para. 16. Four of the seven trustees (the “Phase II Trustees”) are elected by the owners of the units constructed during Phase II and contained within the Villa Building (the “Phase II unit owners”). Windgate SOF, para. 17. In the case of matters pertaining solely to Phase I, votes by at least two of the Phase I Trustees are required. Windgate SOF, para. 19. In the case of matters pertaining solely to Phase II, votes by at least three of the Phase II Trustees are required. Windgate SOF, para. 20. For general matters pertaining to both Phase I and Phase II, a majority vote by the entire Board, including both the three Phase I Trustees and the four Phase II Trustees, is required. Windgate SOF, para. 18.

### **IV. The Condominium Documents**

Certain provisions contained within the Condominium’s governing documents, including the Master Deed, the Declaration of Trust, and the By-Laws (collectively, the “Governing Documents”), are relevant to the current dispute.

#### **The Master Deed (J.A., Ex. A):**

First, the Master Deed establishes that the Condominium has three separate budgets, and it defines each. It defines the term “Residential Budget for Phase I” to mean “the budget established by the . . . [Phase I Trustees] adopted and created pursuant to the Declaration of Trust and By-Laws attached hereto and incorporated herewith for Phase I.” J.A., Ex. A, I(A)(2). Similarly, the Master Deed defines the term “Residential Budget for Phase II” to mean “the

budget established by the . . . [Phase II Trustees] adopted and created pursuant to the Declaration of Trust and By-Laws attached hereto and incorporated herewith for Phase II.” J.A., Ex. A,

I(A)(2). Lastly, it defines the term “Shared Common Area Budget” to mean “the budget established by the Board of Trustees of Phase I and the Board of Trustees of Phase II, adopted and created pursuant to the Declaration of Trust and By-Laws attached hereto.”<sup>3</sup> J.A., Ex. A,

I(A)(2).

Next, the Master Deed divides the “Common Areas and Facilities of the Condominium” into three categories: those related to Phase I; those related to Phase II, and those related to both Phase I and II. The “Phase I . . . [Common Areas and Facilities]” include:

- (i) The attic, foundation, structural members, beams, supports, exterior walls, vinyl siding, roof and structural walls, and other structural components located within any Unit;
- (ii) Installation of central services, if any, such as heat, electric power, gas, hot and cold water, including all equipment attached thereto, wherever located, but not including equipment solely servicing a single Unit, including Appurtenant Areas thereof, whether located in that Unit or located elsewhere in the Common Areas;
- (iii) All conduits, chutes, ducts, plumbing, wiring, flues and other facilities for the furnishing of utility services (collectively, “utility installations”) which utility installations are: (i) contained in the common portions of the Building; and (ii) do not solely serve a single Unit, and all such facilities contained within either Unit, including Appurtenant Areas thereof, which serve parts of the Building (including Units) other than the Unit within which such facilities are located, together with an easement of access thereto in the Trustees of the Condominium Trust for maintenance, repair and replacement;
- (iv) Steps in the entrance;
- (v) Each Phase I Unit Owner shall be authorized to use the Common Areas of the Association defined in this Section A and Article V, Section C, but shall be prohibited from using the Common Areas of Phase II in Article V, Section B, except for the Recreational Facilities located in Phase II as shown of [sic] the Site Plan. Notwithstanding this right, Phase I Unit Owners shall be prohibited from parking in the areas reserved for Phase II Unit Owners, their tenants, guests, invitees, etc.

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<sup>3</sup> Throughout this Memorandum of Decision and Order, where appropriate, the Residential Budget for Phase I, the Residential Budget for Phase II, and the Shared Common Area Budget are referred to collectively as the “Three Condo Budgets.”

J.A., Ex. A, V(A). The “Phase II [Common Areas and Facilities]” include:

- (i) The attic, foundation, structural members, beams, supports, exterior walls, vinyl siding, roof and structural walls, and other structural components located within any Unit;
- (ii) Installation of central services, if any, such as heat, electric power, gas, hot and cold water, boiler room and cooling tower, including all equipment attached thereto, wherever located, but not including equipment solely servicing a single Unit, including Appurtenant Areas thereof, whether located in that Unit or located elsewhere in the Common Areas;
- (iii) All conduits, chutes, ducts, plumbing wiring, flues and other facilities for the furnishing of utility services (collectively, “utility installations”) which utility installations are: (i) contained in the common portions of the Building; and (ii) do not solely serve a single Unit, and all such facilities contained within either Unit, including Appurtenant Areas thereof, which serve parts of the Building (including Units) other than the Unit within which such facilities are located, together with an easement of access thereto in the Trustees of the Condominium Trust for maintenance, repair, and replacement;
- (iv) The Main entrance, foyers, other entrances, hallways and corridors, stairways and fire escapes;
- (v) Utility rooms;
- (vi) The elevator, elevator shaft, pits and all associated components for the same;
- (vii) All trash removal facilities;
- (viii) Steps in the entrance;
- (ix) Each Phase II Unit Owner shall be authorized to use the Common Areas of the Association defined in this Section B and Article V, Section C but shall be prohibited from using the Common Areas of Phase I in Article V, Section A.

J.A., Ex. A, V(B). And, the “Common Areas and Facilities Subject to Phases I and II” include,

in relevant part:

- (i) The Land described in Section II (“Description of Land”) . . .
- (ii) Exterior lighting devices and wires and poles serving the same;
- (iii) Exterior Parking Spaces, except as otherwise limited by this Master Deed;
- (iv) The laws, plants, shrubbery, landscaping, driveways, roads and walkways on the land referred to in clause (a) hereof, and the improvements thereto and thereof, including walls, retaining walls, railings, wood parapets, if any, to the extent that any of the foregoing are not situated within a Unit;
- (v) Irrigation systems and all components related to the same;
- (vi) Such additional Common Areas and Facilities as may be defined in Chapter 183A;

- (vii) All private wells on the property, as well as any components related to the same;
- (viii) The sewer system, which is defined as all pipes, conduits, controls, ducts, plumbing, cables, equipment and other facilities for the furnishing of sewer services and all sewage drainage pipes and all appurtenant areas located outside the Units that serve part of the Condominium other than a specific Unit exclusively;
- (ix) Any components related to the storm water management facility;
- (x) All the Recreational Facilities located in Phase II, as shown on the Site Plan;
- (xi) The Common Areas and Facilities shall be subject to the provisions of the By-Laws of the Condominium Trust, and to all Rules and Regulations promulgated pursuant thereto with respect to the use and maintenance thereof;
- (xii) . . .
- (xiii) All other items situated on the subject property and listed as Common Areas in Massachusetts General Laws, Chapter 183A . . . .

J.A., Ex. A, V(C).

**The Declaration of Trust (J.A., Ex. B):**

The Declaration of Trust provides that the Board shall consist of seven persons, three elected by the Phase I unit owners and four elected by the Phase II unit owners. J.A., Ex. B, 3(a)(ii). In addition, the Declaration of Trust states that “[i]n all matters relating to the administration of the [Condo] Trust . . . and the exercise of the powers” conferred on the Trustees of Phase I and Phase II, respectively, the Trustees of Phase I and Phase II “shall act by majority vote[,]” and that a majority shall consist of not less than two trustees for Phase I and not less than three trustees for Phase II. J.A., Ex. B, 3(c), 3(c)(1). On September 20, 2004, the Declaration of Trust was amended to add similar language regarding the Board’s administration of the Condo Trust as a whole: “In all matters relating to the administration of the [Condo] Trust . . . the exercise of powers hereby conferred to the [Board of] Trustees shall act by majority vote, in no case shall a majority consist of less than four (4).” J.A., Ex. C.

**The By-Laws (J.A., Ex. B, pp. 13-47):**

The Condominium By-Laws are attached to the Declaration of Trust as Exhibit A. The By-Laws describe the “Powers and Duties of the Trustees,” stating that these powers and duties include, among other things: the “[o]peration, care, upkeep and maintenance of the Common Areas and Facilities”; the “[d]etermination of the Common Expenses required for the affairs of the Condominium including, but not limited to, the operation and maintenance of the Common Areas and Facilities”; the “[c]ollection of the Common Expenses from the Unit Owners”; and the “adoption, amendment and administration . . . of Rules and Regulations covering the details of the operation and use of the Common Areas and Facilities[.]” J.A., Ex. B, Ex. A, pp. 13-14.

Next, the By-Laws explain that there are different budgetary requirements for Phase I and Phase II, as well as certain shared expenses, and the By-Laws set forth the basic procedures for establishing the Three Condo Budgets.

In order to provide for the[] different budgetary requirements, the Trustees of each Phase shall be entitled and obligated to prepare a budget for each of the respective Associations, which shall be submitted to the [Board of] Trustees as a whole, for collection. The [Board of] Trustees shall also prepare a budget for the shared Common Expenses. The budget for Phase I shall be entitled “Residential Budget for Phase I”. The budget for Phase II shall be entitled “Residential Budget for Phase II”. The budget for the shared Common Expenses shall be entitled “Shared Common Area Budget” . . . [And,] all Owners of Condominium Units, whether in Phase I or Phase II, shall be obligated to pay Shared Common Expenses for Shared Common Areas in addition to the budgets prepared by the respective Trustees, depending on which Phase the Unit is associated with.

J.A., Ex. B, Ex. A, p. 15. In accord with this provision, the Phase I Trustees shall:

[P]romulgate a Residential Budget for Phase I which shall consist of all items properly, in the good faith judgment of the [Phase I] Trustees, attributable to the Common Areas of Phase I of the Condominium Association or for which the Phase I Units of the Association are responsible pursuant to the Master Deed and Declaration of Trust. Phase I Trustees shall forward to the [Board of] Trustees . . . these assessments and the [Board of] Trustees thereafter shall assess against each Unit Owner in Phase I, the Residential Budget for Phase I[.]



J.A., Ex. B, Ex. A, p. 15. The Phase II Trustees shall:

[P]romulgate a Residential Budget for Phase II which shall consist of all items properly, in good faith judgment of the [Phase II] Trustees, attributable to the Common Areas of Phase II of the Condominium Association or for which the Phase II Units of the Association are responsible pursuant to the Master Deed and Declaration of Trust. Phase II Trustees shall forward to the [Board of] Trustees . . . . these assessments and the [Board of] Trustees thereafter shall assess against each Unit Owner in Phase II, the Residential Budget for Phase II[.]”

J.A., Ex. B, Ex. A, pp. 15-16. Lastly, the full Board, i.e., the three Phase I Trustees and the four Phase II Trustees, shall:

[P]romulgate a budget which shall consist of all items properly and in the good faith and judgment of the [Board of] Trustees, attributable to the Common Areas of the Association as defined in the Master Deed and shall be assessed pursuant to the percentage interest of the Unit as a whole, established in the Master Deed.

J.A., Ex. B, Ex. A, p. 16.

#### **V. The Condominium’s 2022 Budget Process**

The 2022 budget process began in October 2021 with a telephone call among the property manager, Steve Lewis (“Lewis”), Phase I Trustee Joe Dorato (“Dorato”), and Phase II Trustee Amy Sciuto. Windgate SOF, para. 39. Following that telephone call, Lewis prepared initial drafts for the Three Condo Budgets. Windgate SOF, para. 40. Lewis circulated the draft budgets to the Board, i.e., all seven Trustees, on November 19, 2021. Windgate SOF, para. 41; Cardaci SOF, para. 8. All seven Trustees met with Lewis on November 30, 2021, to review the 2022 draft budgets. Windgate SOF, para. 42. During this meeting, one of the Phase II Trustees questioned how the gas, electric, and elevator maintenance charges were being allocated. Windgate SOF, para. 43. This resulted in significant debate.

After much back and forth, as well as review by counsel, the proposed budgets were revised so that certain expenses that had previously only ever been included on the Residential Phase II Budget were listed as common area expenses on the Shared Common Area Budget.

Windgate SOF, para. 44, 45. Lewis then re-circulated the draft budgets, which the Board approved by majority vote. More specifically, all four of the Phase II Trustees voted to approve the Three Condo Budgets; however, none of the Phase I Trustees voted in favor of the new budgets. Windgate SOF, para. 46; Cardaci SOF, para. 9, 10. The Phase II unit owners did not see any increase in their monthly common area expenses. Cardaci SOF, para. 11. However, as a result of the changes that were made regarding the allocation of certain expenses, the common area expenses that the Phase I unit owners owed pursuant to the Residential Phase I Budget increased by \$8.59 per month, and the expenses they owed pursuant to the Shared Common Area Budget increased by \$65.99 per month, effective July 1, 2022. Cardaci SOF, para. 12, 13.

#### **VI. The Three Condo Budgets for 2022**

Cardaci alleges that there are particular budget line items that historically were allocated to the Residential Phase II Budget, Cardaci Memo. L. Supp. Mot. Summ. J. (Paper No. 16.1), pp. 10-15, and it was unlawful for the Board to move these expenses to the Shared Common Area Budget when creating the Three Condo Budgets for 2022.<sup>4</sup> On the other hand, the Board contends that the Phase II unit owners already bear more than their fair share of the Condominium's common area expenses because the Residential Phase II Budget includes expenses that are not solely attributable to Phase II, and that the Board's decision to allocate

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<sup>4</sup> Cardaci purports to identify specific monetary values, as well as the particular percentages allocated to each of the Condominium's three budgets. The court does not consider these statements about what was allegedly done historically in comparison to what was purportedly done in connection with the Three Condo Budgets for 2022. The assertions are not part of the Cardaci SOF (Paper No. 16.2); nor are they included in Cardaci's responses to the Windgate SOF (Paper No. 15.4). Additionally, Cardaci provides no record citation whatsoever in support of any of these statements. See, e.g., Coleman v. Cambridge Sav. Bank, 103 Mass. App. Ct. 1104, 2023 WL 5286090, at \*4 (Mass. App. Ct. Aug. 17, 2023) (Unpublished M.A.C. Rule 23.0) ("bare allegations unsupported by actual evidence, are insufficient to defeat a moving party's motion for summary judgment") (citation omitted). Most significantly, the court does not consider Cardaci's statements material to its resolution of the pending motions. The propriety of what budget allocations may or may not have been made historically is not before the court; rather, the sole issue currently before the court is whether the allocations the Board made in connection with the Three Condo Budgets for 2022 were reasonable and lawful.

certain expenses to the Shared Common Area Budget during the 2022 budget process was entirely reasonable.

The budget categories that Cardaci and the Board discuss in their respective Motions are as follows:

Trash & Water: Phase II pays for certain water and trash removal services that the Board contends are attributable to the shared common areas and facilities. For example, Phase II pays for the removal of the trash in the dumpster associated with the Villa Building which includes the removal of trash from the amenity rooms and the mail room. Phase II also pays for the water that services the amenity rooms and the three bathrooms associated with the amenity rooms, which are used by all residents, not just Phase II residents. Windgate SOF, para. 29.

Emergency System Expenses: The 2022 Shared Common Area Budget includes a line item for expenses associated with the maintenance and upkeep of sprinklers. These sprinklers are located in the Villa Building's common areas. Windgate SOF, para. 30.

Repairs: The Shared Common Area Budget includes a line item for all common area repairs, without distinguishing between whether the repair in question is being made in a Phase I common area, a Phase II common area, or a shared common area. Windgate SOF, para. 31.

The Cooling Tower: The Shared Common Area Budget includes a line item for cooling tower chemicals. The cooling tower chemicals are used in the cooling tower that is located outside the Villa Building which serves all common areas associated with the Villa Building, including the six amenity rooms, the common hallways, and the common entryways. Windgate SOF, para. 32.

Cleaning: The Shared Common Area Budget includes a line item for cleaning. This category includes expenses associated with cleaning the common areas in the Villa Building, including the amenity rooms. The category does not include cleaning for any individually owned unit. Phase II pays 20% of the cleaning costs as part of the Residential Phase II Budget in addition to its share of the 80% of the costs included in the Shared Common Area Budget. Windgate SOF, para. 33.

Elevator: The Shared Common Area Budget includes a line item for expenses related to the elevator. The elevator provides access to the common amenity rooms on the second and third floors of the Villa Building, which are available to all residents and their guests. In fact, the amenity spaces on the second and third floors of the Villa Building are directly adjacent to the elevator. Windgate SOF, para. 34.

HVAC: The line item in the Shared Common Area Budget for HVAC repairs includes costs to repair and maintain the HVAC units that serve all common areas, including the six amenity rooms and the mailroom located in the Villa Building. This line item does not include the cost to service or repair the HVAC systems that serve the individually owned units located in the Villa Building. Windgate SOF, para. 35.

Electric: The electrical category in the Shared Common Area Budget includes costs for electricity for the common areas located in the Villa Building, including power for the lights in the entryway, lobby (where all resident mailboxes are located), common hallways, elevator, amenity rooms, and facilities in the amenity rooms such as fitness equipment, kitchen appliances, televisions, and similar electronic devices. In addition, this category includes costs for electricity that serves certain outdoor common areas, such as that which is used to power exterior lighting for walkways and parking lots. Windgate SOF, para. 36.

Gas: The line item in the Shared Common Area Budget for gas includes costs associated with the common areas and facilities located in the Villa Building, including gas for the heat pumps that service the amenity rooms, common hallways, and the common fireplace. The Phase II unit owners pay 89% of the gas bill as part of the Residential Phase II Budget; only 11% of the gas costs are included in the Shared Common Area Budget. Windgate SOF, para. 37.

Telephone: The costs included in the Shared Common Area Budget under the telephone category include the expenses associated with the Villa Building's intercom system, including the telephone in the elevator, as well as for costs associated with the fob system that allows all residents access to the Villa Building.<sup>5</sup>

## **VII. Cardaci's Unauthorized Transfer of Condominium Funds**

In June 2022, Cardaci went to TD Bank with another Phase I Trustee who is now deceased and withdrew \$3,500.00 from the Condominium's master reserve account (the "reserve funds"). Windgate SOF, para. 48. He accessed the reserve funds without the knowledge or approval of a majority of the Board.<sup>6</sup> Windgate SOF, para. 50. Cardaci did

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<sup>5</sup> Without any citation to the record, Cardaci disputes these assertions, stating that the intercom system only serves the Villa Building and that there are no costs associated with the fob system. The court is skeptical. While they may be minimal, it seems unlikely that there are absolutely no costs associated with the fob system. For example, what happens if the device that is located at the entryway of the Villa Building, which allows all residents access to the Villa Building to retrieve mail and use the amenity rooms, malfunctions?

<sup>6</sup> Cardaci disputes the Board's assertion that he did not have approval to withdraw the funds in question, pointing out, without reference to any record citation, that he had approval from all the Phase I Trustees.

so to pay the retainer for the legal expenses associated with bringing this action, which he asserts in his individual capacity. Windgate SOF, para. 49.

## **DISCUSSION**

There are two claims at issue in this case—Cardaci’s claim for declaratory judgment and the Board’s counterclaim against Cardaci for breach of fiduciary duty. As to the claim for declaratory judgment, Cardaci and the Board seek contrary declaratory judgments concerning the lawfulness of the Board’s adoption of the Three Condo Budgets for 2022, and in particular, its allocation of certain expenses to the Shared Common Area Budget. With respect to the claim for breach of fiduciary duty, the parties disagree about whether Cardaci had authority to withdraw funds from the Condominium’s master reserve account to pay for legal expenses associated with this action, without first obtaining permission from the Board. Below, the court addresses these claims and arguments in more detail.

### **I. Standard of Review**

“Summary judgment is appropriate where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” Barbette v. Stempniewicz, 490 Mass. 98, 107 (2022), quoting Conservation Comm’n of Norton v. Pesa, 488 Mass. 325, 330 (2021); see also Mass. R. Civ. P. 56(c). “The moving party bears the burden of demonstrating the absence of a triable issue of fact on every relevant issue.” Scholz v. Delp, 473 Mass. 242, 249 (2015), citing Standerwick v. Zoning Bd. of Appeals of Andover, 447 Mass. 20, 32 (2006).

The moving party may satisfy its burden by submitting affirmative evidence negating an essential element of the opposing party’s case, or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of its case at trial. Flesner v. Technical Commc’ns Corp., 410 Mass. 805, 809 (1991); Kourouvacilis v. General Motors Corp.,

410 Mass. 706, 714 (1991). Once the moving party establishes the absence of a triable issue, the party opposing the motion must respond with evidence of specific facts establishing the existence of a genuine dispute. Pederson v. Time, Inc., 404 Mass. 14, 17 (1989).

In determining whether genuine issues of fact exist, the court must draw all inferences from the underlying facts in the light most favorable to the party opposing the motion. See Attorney Gen. v. Bailey, 386 Mass. 367, 371, cert. denied, 459 U.S. 970 (1982). Nevertheless, the opposing party cannot rest on its pleadings and mere assertions of disputed facts to defeat the motion for summary judgment. LaLonde v. Eissner, 405 Mass. 207, 209 (1989). Lastly, where the court is presented with cross-motions, as in this case, the standard of review is identical for both motions. Epstein v. Board of Appeals of Boston, 77 Mass. App. Ct. 752, 756 (2010).

## **II. Analysis**

### **A. Cardaci's Claim for Declaratory Judgment**

“The declaratory judgment act . . . authorizes courts to make ‘binding declarations of right, duty, status and other legal relations’ where the parties present an ‘actual controversy.’” Kligler v. Attorney Gen., 491 Mass. 38, 44 (2022), quoting G. L. c. 231A, § 1. “Such relief is appropriate only if a plaintiff can demonstrate the existence of an actual controversy, as well as the requisite legal standing to secure its resolution.” Id. (quotations and citation omitted). “An actual controversy is a real dispute caused by the assertion by one party of a legal relation, status or right in which he has a definite interest, and the denial of such assertion by another party also having a definite interest in the subject matter[.]” Id. at 44-45 (quotations and citations omitted). Meanwhile, a party has standing when it can allege an injury within the area of concern of the statute, scheme, or constitutional right “under which the injurious action has occurred.” Id. (quotations and citation omitted).

Here, the parties do not dispute that there is an actual controversy, or that the court has the authority to determine the lawfulness of the Board's conduct with respect to the adoption of the Three Condo Budgets for 2022. See, e.g., Trustees of Beechwood Vill. Condo. Tr. v. USAlliance Fed. Credit Union, 95 Mass. App. Ct. 278, 291-292 (2019) (determining, on claim for declaratory judgment under G. L. c. 231A, § 1, what rights and duties condominium's governing documents confer on condominium trustees). In fact, both Cardaci and the Board seek declaratory relief. Cardaci requests that the court declare the Board's adoption of the Three Condo Budgets for 2022 and, in particular, its allocation of expenses to the Shared Common Area Budget unlawful, and in requesting summary judgment in its favor on Cardaci's claim, the Board requests that the court declare the opposite.

In the condominium context, the Condominium Law is "essentially an enabling statute, setting out a framework for the development of condominiums in the Commonwealth, while providing developers and unit owners with planning flexibility." Scully v. Tillery, 456 Mass. 758, 769 (2010), quoting Queler v. Skowron, 438 Mass. 304, 312 (2002). Thus, it "sets forth certain minimum requirements for the establishment of condominiums, but 'those matters that are not specifically addressed in the [Condominium Law] are to be worked out by the involved parties.'" Id., quoting Queler, 438 Mass. at 312-313. Consequently, the master deed provides "the rules of the game[.]" Strauss v. Oyster River Condo. Tr., 417 Mass. 442, 452 (1994), while the declaration of trust and the bylaws may address matters not described in the Condominium Law, so long as they are "not inconsistent" with the Condominium Law or the relevant master deed. Trustees of Cambridge Point Condo. Tr. v. Cambridge Point, LLC, 478 Mass. 697, 701-702 (2018).

Here, interpretation of the Governing Documents is at the heart of the dispute between Cardaci and the Board. Cardaci contends that the Board's allocation of certain expenses to the Shared Common Area Budget is in direct conflict with the Governing Documents. Further, he argues that, pursuant to the Governing Documents, adoption of the Three Condo Budgets and the allocations made pursuant to those budgets required the approval of five trustees (two Phase I Trustees and three Phase II Trustees) not four trustees as happened in this case. On the other hand, the Board claims that its adoption of the Three Condo Budgets and its allocation of expenses among those budgets was done in accord with the Governing Documents, and that, to the extent it exercised any discretion, the court should defer to its reasonable interpretation of the Governing Documents. "Principles of deed and contract interpretation guide . . . [the court's] discussion of the[se] issues." Trustees of Beechwood Vill. Condo. Tr., 95 Mass. App. Ct. at 284, quoting Boston Redev. Auth. v. Pham, 88 Mass. App. Ct. 713, 717 (2015).

Thus, as with the interpretation of any contract, the court "must construe all words that are plain and free from ambiguity according to their usual and ordinary sense." Id., quoting Boston Redev. Auth., 88 Mass. App. Ct. at 717. Further, "[a]n interpretation which gives a reasonable meaning to all of the provisions of a contract is to be preferred to one which leaves a part useless or inexplicable." Trustees of Kettle Brook Lofts Condo. Tr. v. Kettle Brook Lofts, LLC, 2020 WL 1891255, at \*6 (Mass. Land Ct. Apr. 16, 2020) (Rubin, J.) (citations omitted). Lastly, "[w]here the language of a contract is clear and unambiguous, summary judgment is an appropriate vehicle for judicial interpretation because the court may interpret the meaning of the contract as a matter of law without resort to extrinsic evidence or determinations of fact." Trustees of Beechwood Vill. Condo. Tr., 95 Mass. App. Ct. at 284-285, quoting Sullivan v. Southland Life Ins. Co., 67 Mass. App. Ct. 439, 440 (2006). In this case, the parties do not claim



that the Governing Document are ambiguous, or that summary judgment is inappropriate—in fact, both Cardaci and the Board seek summary judgment—and the court concludes that the Governing Documents are unambiguous.

First, the Master Deed establishes that the Condominium has three separate budgets—the Residential Budget for Phase I, the Residential Budget for Phase II, and the Shared Common Area Budget—and that the Shared Common Area Budget is to be “established by the Board of Trustees of Phase I and the Board of Trustees of Phase II,” i.e., that the Shared Common Area Budget is to be established by the full seven-person Board, which consists of the three Phase I Trustees and the four Phase II Trustees. J.A., Ex. A, I(A)(2). Similarly, the By-Laws clearly state that, while the Phase I Trustees and the Phase II Trustees are responsible for establishing the budgets for their respective associations, the Board of Trustees as a whole, including both the Phase I Trustees and the Phase II Trustees, is responsible for “prepar[ing] a budget for the shared Common Expenses.” J.A., Ex. B, Ex. A, p. 15. Further, the By-Laws clearly and unambiguously state that, in addition to the common expenses owed pursuant to the budget prepared by the trustees for their association, “all Owners of Condominium Units, whether in Phase I or Phase II, shall be obligated to pay Shared Common Expenses[.]” J.A., Ex. B, Ex. A, p. 15. Lastly, the By-Laws state that the Shared Common Area Budget “shall consist of all items properly and in the good faith and judgment of the [Board of] Trustees, attributable to the Common Areas of the Association as defined in the Master Deed[.]” J.A., Ex. B, Ex. A, p. 16.

In the court’s view, the above provisions clearly and unambiguously establish the following: (1) that the Board as a whole is responsible for establishing the Shared Common Area Budget; (2) that all unit owners, whether they own units constructed as part of Phase I or Phase II, are responsible for paying their portion of the expenses included in the Shared Common Area

Budget; and (3) that, so long as the Board's allocation of expenses to the Shared Common Area Budget was made in good faith and not contrary to either the Condominium Law or the Master Deed, the court should not disturb those allocations. See, e.g., Pompei v. Fincham, 2007 WL 4626915, at \*2 (Mass. Super. Nov. 16, 2007) (Fabricant, J.) (applying business judgment standard to review of scheme for discounting condominium fees). As to this last point, the court concludes that, with one exception, the Board's adoption of the Three Condo Budgets for 2022, and its allocation of expenses to the Shared Common Area Budget, were reasonable and lawful.

The Master Deed plainly states that “[a]ll the Recreational Facilities located in Phase II” are part of the “Common Areas and Facilities Subject to Phases I and II[.]” J.A., Ex. A, V(C). Thus, the court concludes that, in exercising its good faith judgment, it was reasonable for the Board to allocate expenses associated with the repair, maintenance, and upkeep of the amenity rooms, as well as the adjacent areas in the Villa Building, which allow residents and their guests to access and use the amenity rooms, such as the common hallways and bathrooms, to the Shared Common Area Budget. In fact, based on a plain reading of the Governing Documents, it seems clear that the Phase I unit owners were always expected to bear their fair share of the expenses associated with these common areas, to which they have free access.

The above notwithstanding, the court takes issue with one expense category that the Board allocated to the Shared Common Area Budget. The Shared Common Area Budget for 2022 includes a line item for expenses associated with the elevator. Windgate SOF, para. 34. While it may be true, as the Board contends, that the elevator is used by all residents to access the amenity rooms located on the second and third floors of the Villa Building, the Master Deed specifically states that “[t]he elevator, elevator shaft, pits and all associated components for the same” are part of the “Phase II [Common Areas and Facilities].” J.A., Ex. A, V(B). For this

reason, the court concludes that assigning expenses related to the upkeep and maintenance of the elevator to the Shared Common Area Budget is contrary to the Master Deed. Thus, such an allocation is not reasonable or lawful. A declaratory judgment, pursuant to G. L. c. 231A, § 1, shall enter in accordance with this conclusion.

Lastly, the court rejects Cardaci's argument that adoption of the Three Condo Budgets for 2022 required the approval of five trustees. Cardaci argues that, because matters pertaining solely to Phase I require the approval of at least two of the Phase I Trustees and matters pertaining solely to Phase II require the approval of at least three of the Phase II Trustees, matters pertaining to the entire Condominium, such as the adoption of the Shared Common Area Budget, requires the approval of three Phase I Trustees and two Phase II Trustees. This argument is not supported by the Governing Documents. In September 2004, the Declaration of Trust and the By-Laws were amended. J.A., Ex. B, Amend., p. 1. According to that amendment, in "all matters related to the administration of the [Condo] Trust" and in all matters related to "the exercise of [the] powers . . . conferred to the Trustees," the Trustees "shall act by majority vote," and "in no case shall a majority consist of less than four (4)." The amendment makes no mention of requiring approval from a specific number of Phase I Trustees and a specific number of Phase II Trustees. Rather, based on the clear and unambiguous language, adoption of the Three Condo Budgets for 2022 was proper, as the Board had approval of four trustees, which constituted a majority.

#### **B. The Board's Counterclaim for Breach of Fiduciary Duty**

Next, the court must address the Board's counterclaim against Cardaci for breach of fiduciary duty. To prevail on this claim, the Board must establish: "(1) the existence of a fiduciary duty; (2) breach of that duty; (3) damages; and (4) a causal connection between breach

of the duty and the damages.” Baker v. Wilmer Cutler Pickering Hale and Dorr LLP, 91 Mass. App. Ct. 835, 842 (2017). Here, the undisputed material facts demonstrate the Board is entitled to judgment as a matter of law on this claim, at least as to liability.

First, the organization of unit owners that governs the operations of a condominium is vested with broad power and authority, as set forth in G. L. c. 183A, § 10, to conduct the operations and affairs of the condominium. The members of this governing organization owe a fiduciary duty to the condominium to carry out their duties and responsibilities in a manner that is in the best interests of the entire condominium. Like the fiduciary duty owed by a corporate officer to a corporation’s shareholders, the fiduciary duty owed by the members of this governing board runs to the condominium as a whole. Cigal v. Leader Develop. Corp., 408 Mass. 212, 219 (1990); Golub v. Milpo, Inc., 402 Mass. 397, 401 (1988). Thus, there can be no real question about whether Cardaci owed a fiduciary duty.

Next, the undisputed material facts establish that Cardaci breached his fiduciary duty. He disagrees, contending that he did not breach his fiduciary duty because he had permission from all the Phase I unit owners to withdraw funds to pursue this litigation. The court finds Cardaci’s contention unpersuasive. He withdrew funds from the Condominium’s reserve account, without the Board’s permission, to pursue this action, which he filed in his personal capacity. Thus, he used the Condominium’s funds for his own personal expenses.

Lastly, there can be no question that the Condominium was damaged by Cardaci’s unauthorized withdrawal of funds. Thus, summary judgment shall enter in favor of the Board on its counterclaim for breach of fiduciary duty in the amount of \$3,500.00.<sup>7, 8</sup>

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<sup>7</sup> To the extent the Board seeks damages above and beyond the \$3,500.00 Cardaci withdrew from the Condominium’s reserve account, the record currently before the court does not support such an award.

<sup>8</sup> The Board’s request that, as a consequence of his breach of fiduciary duty, the court enter an order prohibiting Cardaci from serving as a trustee now or in the future. The court declines to do so. The Declaration of Trust contains

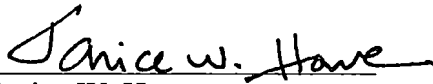
**CONCLUSION AND ORDER**

For the reasons stated above, it is hereby **ORDERED** that both the Motion for Summary Judgment by the Board of Trustees of the Windgate at Salisbury Condominium Trust (Paper No. 15) and Plaintiff's Motion for Summary Judgment (Paper No. 16) are **ALLOWED** in part and **DENIED** in part.

Accordingly, under G. L. c. 231A, § 1, the court **ORDERS** and **DECLARES** that it was unlawful for the Board to allocate expenses associated with elevator repair and maintenance to the Shared Common Area Budget for 2022, as the Master Deed specifically states that the elevator and its associated components are part of the Phase II Common Areas and Facilities. Otherwise, the Board's adoption of the Three Condo Budgets for 2022, and its allocation of expenses to the Shared Common Area Budget for 2022, was reasonable and lawful.

Further, judgment shall enter in favor of the Board on its counterclaim against Cardaci for breach of fiduciary duty in the amount of \$3,500.00.

SO ORDERED.

  
Janice W. Howe  
Justice of the Superior Court

January 2, 2024

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provisions regarding the removal of both Phase I Trustees and Phase II Trustees. J.A., Ex. B, 3(d). The court declines to disturb or interfere with these provisions. It is for the affected unit owners to determine whether, in their view, Cardaci should be removed from his position as a Phase I Trustee.