

Two recent court decisions have exonerated Tom Roos and IDC from nearly 12 years of bogus claims regarding the reasonableness of his actions in 1994. Those decisions establish that the Associations' claims that Tom acted in bad faith were unsupported all along. The price tag to the unit owners for their Associations' unsuccessful pursuit of bogus claims, as unilaterally authorized by the Associations' respective Boards, has reached upwards of more than \$1.9 Million!!! Goat Island and its residents would have been better served using that \$1.9 Million plus to beautify and maintain their valued properties instead of lining the pockets of the Associations' lawyers with unit owners' money.



Know the Facts

FACT

- ✓ Goat Island has been in Tom's family since the 1960's. Tom's grandfather's company, Globe Manufacturing, purchased Goat Island from the Newport Redevelopment Agency and constructed apartment complexes and townhouses, as well as the Hotel and Marina. Tom worked maintenance on the island starting at age 12 and grew up with dreams of creating a charming island destination for tourists and residents alike.

FACT

- ✓ While on the Board of Globe, Tom worked hand-in-hand with Hinckley Allen & Snyder (Globe's attorneys at that time), and trustingly sought legal advice and services from the firm. In 1989, Hinckley Allen advised Globe against withdrawing the parcel of land that the Regatta Club resided on, commonly known as the "North Unit". Following Hinckley Allen's advice, Globe did not withdraw the parcel from the development. Tom would later have the same right to withdraw the "North Unit" from the Condominium, but instead followed the procedure for developing it within the Condominium, as advocated previously by Hinckley Allen. That procedure was later found to be defective and resulted in Tom and his businesses being ejected from that property despite having invested millions of dollars in creating a thriving business.

FACT

- ✓ In 1994 Hinckley Allen was tasked by Globe with drafting an Information Statement, which detailed the businesses and assets Tom was purchasing from his grandfather's company. Tom created several solely owned corporations, IDC, INC., IDC, PROPERTIES, INC., and IDC CLAMBAKES, INC. to manage, own, and operate (respectively) the Goat Island businesses and assets. Hinckley Allen later admitted under oath, in court, that, although they represented to Tom and his family that Tom was purchasing certain realty on the island, they did not care whether he ever received the land. ¹ [Click here to link to Hopkins' Testimony]. That testimony became a message of convenience when Hinckley Allen re-surfaced to argue that its former client, Globe, did not in fact own the property they participated in selling to Tom.

FACT

- ✓ In March 1994 Globe sought to extend the period in which development rights needed to be exercised, and in accordance with the condominium documents, participated in the adoption of the Third Amendment. The condominium documents had been written by the law firm Adler, Pollack & Sheehan ["APS"] and lawyers from that firm provided Globe's Board of Directors (including Tom) with advice leading to adoption of that Amendment. One month after Tom purchased the Goat Island assets and businesses, an attorney from Edwards & Angell advised Tom that the Third Amendment may have been done improperly because unanimous consent of the (5) Master Units may have been required. Stanley Kanter, the lead attorney from APS, responded by claiming unanimous consent was considered but regarded as futile, mistakenly confusing the unanimous consent of the Master Units with the 154 sub-condominium units. Edwards & Angell attorney Tim More, who drafted Rhode Island's Condominium Act, advised Tom that unanimous consent of the (5) Master Units was what was required to extend the deadline. Edwards & Angell prepared, and the (5) Master Units adopt, the Fifth Amendment in accordance with that advice. The Rhode Island Supreme Court later ruled that unanimous consent by 154 units was required.

FACT

- ✓ Tom, concerned about the advice he was receiving from the attorneys and facing a deadline (if the extensions were invalid), chose to exercise, rather than extend, his development rights regarding the North Unit, and created a unit, that, if properly done, would have been owned solely by Tom. Believing his attempt was valid, he began using the land to hold open-air events including the X-games, private clambakes, as well as for parking during the Newport Tall Ships festival; all the while bringing economic vitality to Goat Island. No one objected to those uses or disputed Tom's ownership during that period.

¹ Hopkins Testimony.

FACT

- ✓ In the Fall of 1997, construction began on the Regatta Club. Tom and IDC enter into a retro-active tolling agreement with the unit owners, attempting to resolve ongoing disputes about condominium fees, etc. Tom was unaware that there were issues with the title before he commenced construction. The unit owners and Associations never requested he stop building nor claimed ownership of the property. In fact, in the first lawsuit filed by the Associations against IDC in 1999, the Associations made reference to the fact that IDC is the owner of the North, South, and West Master Units. That original dispute sought Tom to pay additional condominium fees, fees that he would only owe if he had owned the Master Units. The City of Newport also taxed Tom as the owner of the property during that time period.

FACT

- ✓ In 1999, despite Tom's good faith efforts to reach a settlement, the Associations 'blind sided' Tom and filed a lawsuit against him. In late Summer of 1999, Hinckley Allen & Snyder took over representation of the Associations and in a pivotal move, began arguing that the property in question was a common element of the Condominium, despite Associations' counsels' earlier recording of a Lis Pendens stating Tom was the then record owner. In summary, Hinckley Allen's argument became: that the voting rights—laid out in the documents APS drafted and Hinckley Allen sold to Tom—were illegal and that the North, South, and West Master Units (which Hinckley Allen participated in selling to Tom) were common elements, not separately owned units. Under that new theory, the Associations argued that the North Unit (upon which the Regatta Club was built and was successfully operating) was a common element. However, by the time that argument was put forth, Tom had already built the Regatta Club and was operating a thriving banquet business.

FACT

- ✓ In 2001, the Superior Court refused to issue a decision on the ownership of the North, South or West Master Units, the land that Tom believed to be his for economic development since he signed the purchase and sales agreement ten years prior. Playing both sides of the fence, Hinckley Allen, the same law firm that drafted the Information Statement for Tom in 1994 outlining his rights, title and interest of Goat Island, argued that they sold Tom nothing.

FACT

- ✓ The Superior Court, and later the Rhode Island Supreme Court, ruled that the voting procedures contained in the condominium documents was illegal and that the 154 units were required to vote on any amendments. The effect of such a ruling was to invalidate the Third, Fourth and Fifth Amendments.

FACT

- ✓ After more than a decade in litigation, the Supreme Court ruled that the North Unit was a “common element” and the Associations sought to eject Tom and his entities from the property and the operation of the Regatta Club. Soon thereafter, Tom petitioned the Bankruptcy Court for protection to safeguard the brides who booked wedding receptions that summer.

FACT

- ✓ Tom offered a \$10M settlement to the Associations to put an end to the fruitless litigation that has cost the Associations and their respective unit owners in exchange for clear title to his land. Without availing the unit owners of that proposition, the Associations’ Boards reject Tom’s proposal, foregoing a multimillion dollar cash injection that could have been used for the benefit of their unit owners and the greater Goat Island community, for the perpetuation of costly litigation.

FACT

- ✓ July 1, 2009: Legal Expenses of GISCA reach more than \$1.98 Million since FY-2005.

FACT

- ✓ March 1, 2010 (“Palmisano Decision”) (C.A. No. 99-232): The Court issues a decision agreeing with Roos and finding Roos did not act recklessly with regard to the voting in the 1994 Amendments (i.e. 3rd and 5th Amendments) and in fact relied upon the advice of counsel on an issue of law that was not clear at that time. Punitive Damages Count of the Associations’ claim should be stricken. Decision on whether Superior Court will strike claims is subject of a hearing Aug. 23, 2010.

FACT

- ✓ June 6, 2010: Bankruptcy Court issues decision (“Clambakes II”) (B.K. No. 05-12267): In Re Clambakes ruling that Clambakes did not trespass because the Associations consented to its operations at the Regatta Club. As a result, the Associations are not entitled to any money damages and their claims are disallowed. The Court further rules that Clambakes reasonably relied upon their consent in investing in the property to its detriment. Both sides are presently appealing.

Now You Know The Facts

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