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Suit claims Surf Club members not compensated for sale

By Julie Kay



Miami attorney Robert Zarco, his law firm, Don Shula's wife Mary Anne and other Surf Club board members are accused in a lawsuit of conspiring to manipulate membership, secretly sell the historic club and use insider knowledge to benefit their relatives and friends.

The suit was filed Tuesday in Miami-Dade Circuit Court on behalf of an inactive club member, Mary Jane Hunt, who claims she was cheated out of compensation in last

month's \$116 million sale of the private Surfside club through insider deals.

"My client will vigorously defend her rights as a member of the Surf Club to receive the full benefit of what she and her family had expected when they purchased their membership," said Thomas Angelo of Fort Lauderdale-based Angelo & Banta, who represents Hunt.

Charles Throckmorton of Kozyak Tropin & Throckmorton in Coral Gables is representing another inactive member who is seeking compensation.

Both are inactive members who are among about 30, including two banks, served papers last month seeking to terminate their memberships.

Zarco did not return calls and emails seeking comment by deadline.

The club has been purchased by SC Property Acquisition LLC, a Miami company led by Turkish conglomerate Koc Group. The transaction was structured as a reverse merger in which the proprietor members exchanged their ownership interest for a financial consideration.

SC Property plans to temporarily close the club and build three 12-story buildings on the east side of the 9011 Collins Ave. site and two four-story buildings on the west side. In addition to the 285 condo-hotel units, the project includes a gourmet food store, a four-star hotel and spa and 661 parking spaces.

The suit claims the club founded in 1930 faced shrinking membership and mounting maintenance costs in recent years. It received numerous offers from potential buyers. Zarco of Zarco, Einhorn, Salkowski & Brito in Miami represented several proprietary members, including Shula, who helped derail a proposed partial sale for \$20 million, according to the suit.

Cost Of Inactivity

After that, a new board was elected which included Zarco's clients. Zarco was named the club's general counsel at a fee of \$6,000 a month, and he received a proprietor certificate giving him membership, states the suit.

The suit alleges Zarco and the board, with insider knowledge of an upcoming purchase offer, began selling active proprietary membership certificates for reduced prices to relatives. Zarco's brother, Isidoro, received one for \$75,000, while several business acquaintances of Shula and an ex-husband also received memberships.

At that point, Zarco and the board eschewed a \$125 million offer from the Peebles Corp. in favor of the \$116 million offer, which was approved by members last September.

Zarco's objective, the suit maintains, was to maximize the pro rata shares of the active proprietary members, which included himself and the board, and eliminate the interests of inactive members, alleges the suit. They "conspired to liquidate and dissolve the Surf Club and create a 'New Surf Club' under the guise of a legal mechanism called a reverse merger," states the suit. Under the New Surf Club, active members would receive life memberships.

All 122 Surf Club memberships, including Zarco's, were converted to rights to receive pro rata shares of sale proceeds of \$700,000 each, states the suit. However, inactive members were entitled to no compensation and their memberships were extinguished.

"It was clearly the design of defendant Zarco and the board of directors to cut off and disenfranchise Hunt and others similarly situated so as to divest them of their right to

share in the net returns once the Surf Club was 'no more' as well as to maximize defendant Zarco's and the board of directors own profits from the sale," the suit asserts.

The state attorney general's office grew concerned about the failure to transfer or redeem a number of proprietary memberships for deceased members, according to the suit. The state advised Zarco to notify it of any future sales. As a result, the suit claimed Zarco deposited \$17.5 million representing money owed to them into his law firm's trust account.

Public Access

Some members also were concerned with a plan to open the club to the public rather than keep it private.

"Essentially what was once an exclusive club for dignitaries would now have its vaulted, cathedral-like central hallway, known as Peacock Alley, open for direct public beach access," the suit says. "The Old Surf Club would cease to exist, and the inactive proprietary members would be disenfranchised and deprived of their equitable interest."

That is a key part of the suit, according to Washington real estate developer John P. Kyle, a proprietary member since 1988 and former board member.

"I don't think most of the members are going to live to see the development of that club," Kyle said. "They don't want old people with walkers there. They want the young eurotrash."

Even though Kyle paid \$25,000 when he joined and received \$727,000 for his membership plus perpetual membership, he said making a profit wasn't the point.

In an unrelated case, the club filed a legal malpractice case last month against three Miami law firms and attorneys over what it called a "botched effort" to reduce its property taxes.

The collective actions of Charles Kline, a partner at [White & Case](#); Stanley Price of Bilzin Sumberg Baena Price & Axelrod; and Steven Zelkowitz, managing partner at [GrayRobinson](#), cost the club more than \$50 million, said the complaint filed by Zarco in Miami-Dade Circuit Court. The suit alleged the lawyers all played roles in obtaining a historic designation for The Surf Club without consulting the board of directors on the negative impact the designation would have on the club's value.