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Surf Club deal spurs legal schism among members

BY MARTHA BRANNIGAN
MBRANNIGAN@MIAMIHERALD.COM

In the final days of the Surf Club, one of Miami's most elite social clubs, the atmosphere has turned decidedly unsocial.

Members have turned against members.

There are lawsuits and countersuits.

After all the soirées, the charity balls, the extravagant shows, the lounging by oceanfront cabanas, after more than eight decades of seeing and being seen in this bastion of the leisure class, it's all come down to a grab for the money.

Things turned sour last year after the 1930-vintage club, owned by its members, agreed to a $116 million acquisition by a deep-pocketed developer.

One group of members claims the other side cut them out of their share of the money.

Recently, the Florida attorney general intervened, asserting that if some members or their heirs can't be found, the state is entitled to those proceeds.

The battle royal has managed to ensnare an Austrian-born baron, a philanthropist, several horse breeders, a luxury-retail magnate and the wife of Dolphins coaching legend Don Shula.

"It looks like it's turned into a real bag of worms," said Addison H. King, of Indianapolis, whose wife, Sue Krafft King, was a club member on inactive status. She is among those who recently reached individual confidential settlements.

In another squabble, the club sued Miami attorney Stanley B. Price, whom it hired to help obtain historic designation and tax breaks. The club alleges the historic status cut $30 million to $50 million from its market value, limiting development on the site, an 8.7-acre jewel at 9011 Collins Avenue, which boasts 815 feet of oceanfront in Surfside.

Spearheading the takeover was Nadim Achi, founder and managing partner of the Miami real-estate investment firm of Fort Capital Management.

Achi put together a group composed of the Koç Group, a Turkish conglomerate; the Cabot family of Boston; and several Brazilian and Peruvian families. They outflanked a number of other suitors.

Plans call for erecting a glass-clad, luxury condominium and a five-star hotel around the historic structures, which are to be meticulously restored.

New York “starchitect” Richard Meier has been brought in to design the project.

The deal (approved by 92 percent of active members) was made necessary by dwindling membership and soaring maintenance bills at the 80-year-old facility.

The active members got $727,000 each for their stakes.

But another group of equity members was allowed over the years to go on “inactive’’ status. Most are heirs of members who quit paying dues and gave up the right vote or use the facility while retaining the right to a share of proceeds if the club were dissolved.

There’s the rub: The club asserts the “reverse merger” didn’t dissolve the club; rather, the acquirer ended up as its sole member.

The club filed suit last year, seeking a ruling on its stance that inactive members aren’t entitled to a payout because the club wasn’t “dissolved.”

The club has set aside $17.5 million in escrow, awaiting the court’s decision.

“All the inactive members interests are fully protected,” said Robert Zarco, the club’s attorney. “It has all been done in accordance with the law.”

Things started heating up after Zarco was hired as general counsel in 2011. He was introduced to members by Mary Anne Shula, its executive vice president, who knew him from his restaurant franchise work for her husband, Don, the retired Dolphins coach. Zarco received his membership as part of his legal fees, and he led negotiations for the merger.

Among those whose stakes the club has asked to nullify are heirs of Arthur I. Appleton, a prominent Ocala horse breeder who died in 2008.

A number of heirs have shot back with objections and counterclaims.

Stanley Whitman, the 94-year-old owner and developer of Bal Harbour Shops, reopened his mother’s estate in order to battle for a share of the pie.

Court papers say Leona E. Whitman, a founding member, switched to inactive status in February 1983 while keeping her equity interest. She died 10 months later.

As an heir to inactive proprietor certificate No. 3, Stanley Whitman saw his family’s long-held stake canceled without getting so much as a beach towel.

“This lawsuit is nothing more than an action to make sure that my mother’s estate gets paid for her pro-rata share,” Whitman said.

In court papers, Zarco argues Whitman’s inactive membership was never properly transferred to her heirs.

Zarco has hammered out individual settlements with half of 24 parties over inactive membership certificates. Terms are confidential.

Those settling include heirs of James Deering Danielson, whose family built Vizcaya and the Charles Deering Estate.

Separately settling with the club were the heirs of the late Mary Belle Smathers. Her deceased husband, Frank Smathers, was a Miami banker and philanthropist who gave his sprawling estate on Old Cutler Road, Smathers Four Fillies Farm, to the University of Miami.

Also settling recently was Mary Jane Hunt, who had leveled the harshest claims, including allegations of a fraudulent scheme including Zarco and the club’s board to sell discounted memberships to people with ties to board members in anticipation of a merger.

Hunt received an inactive membership from her mother, Elizabeth S. Hunt, who died in 2001. Elizabeth and her husband George H. Hunt Jr. were horse breeders in Marion County.

Zarco said he insisted Hunt dismiss fraud allegations before the club would consider settling, which she did. The settlement pertained only to the question of whether an inactive member should get a payout, he said.

The dismissed allegations said the club’s board — including Mary Anne Shula — sold proprietor memberships to her acquaintances “with the insider knowledge of an upcoming offer to sell.”

The dismissed claims also alleged that Zarco and his brother, Isidoro Zarco, got discounted memberships.

Zarco said he received his April 2011 membership in exchange for legal services and paid full price. “The club couldn’t afford to pay me,” he said.

Zarco said his brother joined the club at his urging and paid $75,000, the going rate at the time, as the club scrambled to raise funds. “My brother did not get one penny discount,” he said.

He said no memberships were sold in anticipation of a merger.

The attorney general got involved because some heirs haven’t been located. The court recently granted the attorney general’s request to appoint a guardian ad litem to protect the interests of the “John Does.’’

The guardian ad litem is tasked with tracking down unknown heirs of deceased club members like Baron Walter Langer Von Langendorff. According to his obituary in The New York Times, the Austrian-born chemist built a perfume empire with White Shoulders and other scents and died in 1983.

Under Florida law, in instances where no heir is found, the state gets to pocket that money.

The club’s contentious demise comes after years of decline.

In its heyday, many of Miami’s elite belonged to the club — although for decades its history was tarnished by a glaring absence of Jews and blacks.

The Mediterranean-style club, designed by Miami architect Russell Pancoast, features a spectacular central hall, Peacock Alley, that extends from Collins Avenue to the beach.

Sir Winston Churchill famously painted seascapes there. Guests included the Duke and Duchess of Windsor, General Douglas MacArthur, and Elizabeth Taylor.

Whitman recalls spectacular shows like those put on by Alfred Baron, a member. “He was a showman — he brought in elephants, everything,” Whitman said. “That was in the glory days. Good God, it’s a ghost of what it used to be.”

Amid its decline, the club hired legal counsel in 2010 to explore an historic designation in a bid to cut taxes. That only triggered more legal fireworks.

With Zarco as general counsel, the club sued the law firm of Bilzin Sumberg Baena Price & Axelrod and attorney Price for malpractice, breach of contract, and breach of fiduciary in Miami-Dade Circuit Court. The case, which originally took aim at other attorneys as well, was dismissed by the court.

An amended complaint filed in June alleges Price failed to advise the club the historic designation would reduce the property’s value. Any damages collected would be divided among club members.

Miami attorney Harley S. Tropin, who represents Price and his firm, said, “The first complaint against this firm and Mr. Price was dismissed. We’re confident the second version will fare no better.’’

So far, none of the turmoil has stymied the new owner’s plans. Fort Capital’s Achi, who negotiated the deal. said he’s moving forward with plans for an 80-room hotel and a 150-unit oceanfront condo. Another 24 units are planned for the west side of Collins Avenue.

His goal, Achi said last fall, is “To bring back the original splendor of the club.’’