

COPY

STATE OF NORTH CAROLINA
COUNTY OF DARE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 88-CVS-198

SEA COLONY CONDOMINIUMS
ASSOCIATION, INC.,
Plaintiffs

vs.

JOHN T. LANCASTER, DONNA L.
KOSKI, BARRIER ISLAND REALTY,
INC., SAMUEL S. MOORE and
wife, LUDIE B. MOORE, CHARLES
T. GARDNER, RICHARD A.
GEPHARDT and wife, JANE A.
GEPHARDT, GERALD CLARK
THOMPSON and wife, SUSAN
ELIZABETH THOMPSON, JOHN D.
WHITLEY and wife, MARGARET A.
WHITLEY, OLIVE H. WRIGHT and
wife, PAULINE V. WRIGHT,
J. PAUL MCNAMARA, JOHN A.
MERRIGAN, JOHN J. RYAN and
KEVIN B. BELFORD, trading as
BAY SHORE JOINT VENTURE, JOHN
R. MOWREY and wife, MELISSA
A. MOWREY, PALMORE DECORATING
CENTER, INC., EDITH RATCLIFFE
CRAWFORD, LINDSEY K. GARDNER
and wife, VIRGINIA V. GARDNER,
CHARLOTTE M. SCOTT, J. GRANT
HUNEYCUTT and wife, BETTY
HUNEYCUTT,

Defendants

FILED
90 NOV -5 PM 3:06
CLERK OF COURT, U.S.C.
BY *Gene Hise*

CONSENT JUDGMENT

THIS CAUSE, coming on to be heard and being heard before the undersigned, Honorable Thomas S. Watts, Superior Court Judge, and it appearing to the Court from the statement of counsel that all matters of controversy set out in the pleadings have been agreed upon by the parties and that the plaintiff and the defendants have agreed that the following terms and conditions shall apply to this settlement:

1. The parties agree that a Declaration will be prepared in form suitable for recording in the office of the Register of Deeds of Dare County. The Declaration shall incorporate the terms of this judgment. The Declaration will be executed by each of the defendants to this lawsuit, the Sea Colony lot

owners' association, all property owners within the Sea Colony residential lot subdivision and such other parties as may be necessary to cause the Declaration to be fully effective as against all of the parties to this lawsuit and binding as a restrictive covenant affecting the fee simple title to the lots within the Sea Colony residential subdivision and further binding upon the heirs, successors and assigns of the present owners of such property. Sea Colony Condominiums Association, Inc. shall also join in the execution of the Declaration.

2. The parties acknowledge that certain documents have been recorded in the public registry for Dare County, North Carolina affecting the Sea Colony Condominiums and the Sea Colony residential subdivision. These documents are identified as follows:

a. Declaration of Protective Covenants recorded in Book 353 at page 894.

b. Certificate of Withdrawal and Rededication recorded in Book 353 at page 899.

These documents set forth certain provisions relating to use of amenities and common properties within the Sea Colony residential subdivision and the Sea Colony Condominiums. It is the intention of the parties to this suit that rights in and to the use of such amenities will be altered, restated and changed by the terms of this Consent Judgment and the Declaration recorded pursuant to this Consent Judgment. To that extent, where conflict exists between the provisions and terms of this Consent Judgment and the Declaration that is recorded pursuant to this Consent Judgment, the provisions set forth within the Consent Judgment and the Declaration recorded pursuant to this Consent Judgment shall prevail in all respects over the terms and provisions of the Declaration of Protective Covenants recorded in Book 353 at page 894 and the Certificate of Withdrawal and Rededication appearing of record in Book 353 at page 899 of the Dare County Registry. In all events where such conflicts shall occur, and without limitation as to the nature of the conflict, the terms and provisions of this Consent Judgment and the Declaration recorded pursuant to this Consent Judgment shall prevail and shall be binding upon the owners of property within the Sea Colony residential subdivision and the Sea Colony Condominiums. To that extent, and only to that extent, the Declaration of Protective Covenants recorded in Book 353 at page 894 and the Certificate of Withdrawal and Rededication recorded in Book 353 at page 899, both of the Dare County Registry, shall no longer create rights and privileges or control in any manner the rights, uses and privileges relating to the properties

described in those declarations. In all other respects, such declarations shall be considered binding and effective for the purposes expressed therein.

3. There shall be two separate and distinct organizations or entities relating to the Sea Colony Condominiums and the Sea Colony residential subdivision. The Sea Colony Condominiums Association, Inc. is a separate and distinct entity. The membership of that association shall be established by its bylaws and by its corporate charter but owners of lots within the Sea Colony residential subdivision shall not be entitled to membership in the Sea Colony Condominiums Association, Inc., nor shall they be entitled to sit as voting members of the Sea Colony Condominiums Association, Inc.

A separate entity shall exist composed of the owners of lots within the Sea Colony residential subdivision, whether such organization stands as an incorporated association or an unincorporated association.

Certain relationships shall exist between the two associations or groups and the members thereof as established by this Consent Judgment and by the Declaration recorded pursuant to the Consent Judgment. However, these relationships shall not affect the separate and distinct status of each entity as described within this paragraph.

4. Certain amenities exist and are located on the common properties of the Sea Colony Condominiums Association, Inc. The term "amenities" as used herein refers to swimming pool or pools, tennis courts, parking areas, gazebos, basketball courts and all similar outdoor facilities designed for common recreational use. The term "amenities" does not include a right of access across common areas to and from the Atlantic Ocean for pedestrian purposes. Ocean access rights are established pursuant to paragraph 7, set forth below. The provisions of this Consent Judgment, and the Declaration recorded pursuant to this Consent Judgment, relating to use of the amenities, fees and assessments relating to amenities and other like matters shall not apply to the ocean access and rights relating to the access. In the event that additional amenities are constructed in the future on the properties of the Sea Colony Condominiums Association, Inc., the use of such amenities and fees and assessments relating to such amenities shall be established in the same manner as the rights, uses and fees set forth within the Consent Judgment and the Declaration recorded pursuant to this Consent Judgment.

5. Sea Colony Condominiums Association, Inc. shall establish fees and assessments for members of the Sea Colony

Condominiums Association, Inc. from time to time and shall be responsible to collect such fees and assessments and to maintain the amenities located on the property of the Sea Colony Condominiums Association, Inc. and owned by that association. The owners of lots within the Sea Colony residential subdivision shall be responsible for the payment of fees and assessments which shall be established and maintained as follows:

- a. A fee of \$35.00 per month for each of the sixteen lots within the Sea Colony residential subdivision is established as the initial fee and is referred to herein as a "user fee". User fees in the amount of \$35.00 per month for each lot beginning with the month of July of 1985 and continuing monthly through the date of this Consent Judgment shall be due and payable upon the execution of this Consent Judgment. Full credit will be given for any contributions or partial payments that have been paid by lot owners to the Sea Colony Condominiums Association, Inc. during this time period.
- b. The owners of lots within the Sea Colony residential subdivision shall establish a method whereby the \$35.00 monthly fee for each lot shall be collected and paid to the Sea Colony Condominiums Association, Inc. as a total monthly payment of \$560.00 per month. This monthly amount shall be due on the first day of each month. The amount shall be payable only as a lump sum payment and shall not be acceptable as individual lot owner payments of \$35.00 each without the express written consent of the board of directors of the Sea Colony Condominiums Association, Inc.
- c. A late fee of \$5.00 for each lot (\$80.00 per month) shall be due in the event that the group payment of \$560.00 is not received by the Sea Colony Condominiums Association, Inc., or its designated managing agency, prior to the sixteenth calendar day of any month.
- d. The \$35.00 user fee per lot as described herein shall not increase for a period of thirty-six months following the settlement date.
- e. After the expiration of a thirty-six month period following the settlement agreement date, the Sea Colony Condominiums Association, Inc. reserves the right to increase the user fees charged to the lot owners within the Sea Colony residential subdivision. No such increase will be greater than the percentage of increase which might be established for condominium dues. Increases after the expiration of the thirty-six month period shall not be cumulative in effect.

f. From time to time, the Sea Colony Condominiums Association, Inc. may levy special assessments relating to maintenance and improvements of common areas and amenities. Such assessments may also relate to the construction of new amenities. For all such assessments relating to amenities and common properties, as defined herein, each lot owner within the Sea Colony residential subdivision shall pay one-half of the assessment amount levied against an individual condominium unit owner.

g. For the purpose of establishing a point of reference for increases in user fees, it is acknowledged that the current condominium dues are \$125.00 per month for one bedroom units and \$185.00 per month for two bedroom units.

6. In the event of nonpayment or delinquency in the payment of the monthly dues or special assessments allocated to the lot owners within the Sea Colony residential subdivision, the Sea Colony Condominiums Association, Inc. shall be entitled to collect such delinquent fees by filing notice of claim of lien in the office of the Clerk of Superior Court of Dare County. Such lien claims may be filed, in the sole discretion of the condominium association, against any delinquent lot among the sixteen lots within the residential subdivision. A claim of lien for the collection of past due or delinquent dues or assessments shall be filed in the manner of claims of lien described in Chapter 44A of the North Carolina General Statutes.

In addition to the right relating to the filing of lien claims, the Sea Colony Condominiums Association, Inc. shall have the right to immediately suspend all privileges and uses of the common areas and amenities for any delinquent lot owner, should such action be necessary in the discretion of the condominium association. Such a suspension shall occur only in the event of a delinquency in payment of the monthly dues. A suspension shall be established by the mailing of notice to the last known address of the delinquent lot owner and to the representative of the lot owners or the lot owners association as provided in writing to the condominium association.

In no event will the right of pedestrian access to and from the Atlantic Ocean from the Sea Colony residential subdivision be suspended or limited for nonpayment or delinquency in the payment of any dues or assessments or any other reason.

A suspension in the right of use of the common properties and amenities will end upon the payment in full of any past due assessments or dues and late fees related thereto. In the event that such payment is made after the filing of a claim of lien, the claim of lien will be satisfied immediately upon such payment and written satisfaction shall be provided to the office of the Clerk of Superior Court.

In the event of a dispute arising between the lot owners and the condominium association relating to dues and assessments, claims of lien or other matters that are addressed herein, such dispute shall be settled by means of arbitration as described in paragraph 8 set forth below.

7. In order that the association of lot owners shall be able to effectively collect the user fees or assessments that are discussed within this Consent Judgment and the Declaration, and in order that such fees may be transmitted and paid as a lump sum payment to the condominium owners association, certain procedures are established through this Consent Judgment and the Declaration recorded pursuant to this Consent Judgment.

a. The lot owners association shall collect the user fees and assessments, if any, together with any additional dues, fees or expenses related to the operation of the lot owners association itself.

b. All such amounts shall be paid to the treasurer of the lot owners association or to a managing agent designated by the lot owners association for collection of such amounts. The lot owners association retains the right, by action of its governing body and in accordance with its bylaws, to designate such a managing agent to accept funds on behalf of the association and to disburse such funds, either to the condominium owners association or for such other purposes as they may be collected. In the event that the services of a managing agent shall cause the lot owners association to incur additional expenses, such amounts shall be prorated equally among the sixteen lots and added to the amounts otherwise due and collectible.

c. The managing agent (or the treasurer of the association if no agent is employed) shall have the authority to file claims of lien and to pursue collection of past due and delinquent dues and assessments, and other fees and expenses against each individual lot and the owner thereof. In the event that the filing of claims of lien, civil actions or other collection procedures results in additional

expenses by way of filing fees, attorney fees and similar matters, the lot owners association shall be entitled to collect such additional amounts and to file a claim of lien or civil action so that such amounts will be included therein.

d. In the event of a delinquency in the payment of fees, assessments or expenses by any individual lot owner, the managing agent or treasurer, acting on behalf of the lot owners association, shall be entitled to pay such delinquent user fees to the condominium owners association and to collect the amounts necessary to make such payment from the remaining lot owners. In such an event, the lot owners association shall be subrogated to all rights of the condominium owners association for collection as well as the rights created by this Consent Judgment and the Declaration recorded pursuant to this Consent Judgment under the lot owners association itself. A decision on whether the lot owners association shall pay for the delinquent fees of a particular lot within the association shall remain solely with the governing body of the lot owners association.

e. The procedures set forth above shall in no event result in a double payment for the same user fees or assessments. However, these procedures may result in collection of additional costs by way of attorney fees, filing fees and collection costs that may be incurred by the two different collecting bodies. In such an event, the delinquent lot owner shall be liable for all such additional costs and expenses.

8. As a result of this Consent Judgment and the Declaration recorded pursuant to this Consent Judgment, there is established and reestablished a nonexclusive permanent easement for the purpose of providing access to and from the beach of the Atlantic Ocean and the Sea Colony residential subdivision. The location of the easement shall follow the right of way of the road providing access from North Carolina Highway 12, the Duck Road, through the Sea Colony residential subdivision and through and to the eastern termination of such road within the common properties of the Sea Colony Condominiums Association, Inc. The easement shall continue along the walkways, sidewalks and access ways established within the Sea Colony Condominiums Association common properties and including, but not limited to, the walkways over the dunes terminating at the high water mark or line of the Atlantic Ocean. The easement described herein shall be appurtenant to the fee simple title to each of the individual lots within the Sea Colony residential subdivision. A conveyance of any such lot or lots within

the subdivision shall also convey the right of use in and to the easements. The right of access to and from the Atlantic Ocean from the Sea Colony residential subdivision, as described herein, shall in no way be limited by or related to disputes arising over the use of common properties and amenities within the Sea Colony Condominiums Association, Inc. properties. In the event of delinquency in the payment of user fees for such amenities or in the event of future disputes over the amount of such fees or assessments, the right of access to and from the Atlantic Ocean shall not be involved in such disputes and shall not be impaired or limited in any way or manner. The easement is a nonexclusive easement, intended to be used in common with the owners of condominium units within the Sea Colony Condominiums.

9. It is the purpose and intention of this Consent Judgment and the Declaration recorded pursuant to this Consent Judgment that a method be established for the payment of fees and assessments relating to the common properties and amenities within the Sea Colony Condominiums together with a method of regulating such fees between the various users. In the event that a dispute shall arise in the future involving the use of the common properties and amenities or the establishment of fees and assessments relating to the maintenance, construction and upkeep of such common properties and amenities or the collection of such fees and assessments as described herein, the parties agree to resolve such disputes by means of arbitration. Arbitration shall be conducted and established in the manner as set forth within North Carolina General Statutes Section 1-567.1 et seq. In the event of such a dispute, the parties may agree to the designation of a single arbitrator. In the event that the parties cannot agree to a single arbitrator, there shall be three, one named in writing by each party within five days after the notice of arbitration is served by either party upon the other, and a third arbitrator selected by the two arbitrators within five days thereafter. No one shall serve as an arbitrator who is in anyway financially interested in the matters or affairs of either party. The parties referred to within this paragraph are understood to be the Sea Colony Condominiums Association, Inc., acting by authority of its board of directors, and the association of lot owners in the Sea Colony residential subdivision, whether such association is incorporated or unincorporated, acting by majority vote of such lot owners or acting in accordance with the bylaws of any association that may exist for such lot owners association.

It is the desire and intention of the parties that certain standards shall apply in the interpretation of this Consent

Judgment and the Declaration recorded pursuant to this Consent Judgment. These standards are set forth below:

- a. The lot owners shall be entitled to the use of common amenities owned by the Sea Colony Condominiums Association, Inc.
- b. The lot owners shall be required to pay a fair and equitable fee and assessment for the use of such common amenities. As much as possible, fees and assessments should be established in the same manner that would be used if such amenities were constructed in a residential subdivision only and allocated among the lot owners of that subdivision or in the manner of other similar subdivisions with amenities located on the Outer Banks of North Carolina.
- c. The condominium association should not be burdened with expensive or time consuming methods of accounting which might be required to isolate costs between lot owners only and condominium owners only. To that end, proportionate fee schedules have been established by this Consent Judgment.
- d. Lot owners shall have the right to express to the board of directors of the condominium association, through the representative of the lot owners, needs, concerns or problems arising out of the common use of the amenities and common facilities.
- e. Fees and assessments should be determined and allocated between lot owners and condominium owners in a way that does not result in the shifting of financial burdens relating to the operation of the condominium only to the lot owners. Fees, expenses and assessments that have no relationship to the lots and the owners thereof or are not affected by the existence of such lots and their use of the common properties should not be allocated to those lot owners when such a distinction can be made.
- f. The right of access to and from the Atlantic Ocean for the lot owners and their successors and assigns shall in no way be linked to or limited by matters relating to the use of the common amenities and facilities.
- g. Each of the owners of lots within the Sea Colony residential subdivision bind themselves and their successors and assigns to the duty to pay all assessments and fees that are from time to time established through the provisions of the Declaration

and to pay such fees and assessments through the lot owners association to the condominium owners association.

h. Each property owner within the Sea Colony residential subdivision binds themselves and their successors and assigns to the concept that the collection of delinquent fees and assessments shall be placed upon the association of lot owners rather than the condominium association. This does not limit the right of the condominium association to collect such fees or to pursue collection efforts but places the primary obligation upon the lot owners association.

i. The property owners within the Sea Colony residential subdivision bind themselves and their successors and assigns to the extent that, should any lot owner fail to make payments of assessments or fees which are established in accordance with the Declaration, the lot owners through their lot owners association shall, within thirty (30) days of the delinquency, pursue the collection of such delinquent fees or assessments, by all reasonable legal means available which will include, without limitation, filing liens and civil actions for collection upon demand by the condominium association. Such pursuit of collection shall be without the requirement of a demand on the lot owners association for such collection efforts by the condominium association.

10. Throughout this Consent Judgment and the Declaration recorded pursuant to this Consent Judgment the parties have been referred to collectively. The Sea Colony Condominiums Association, Inc. refers to the association established for the Sea Colony Condominiums which are also identified as Colony by the Sea Condominiums. In some occasions and in some documents the condominium association is referred to as the condominium or condo association or the Colony by the Sea homeowners association.

The Sea Colony residential subdivision is identified as a subdivision consisting of sixteen lots shown and designated on the plat recorded in the office of the Register of Deeds of Dare County in Plat Cabinet B at Slide 185 and 186. The association of lot owners within that subdivision is sometimes referred to as the Sea Colony Property Owners Association, Inc. or the lot owners or property owners association or by similar identifications.


11. It is intended that certain parties who are not parties to the lawsuit described herein but who are involved as property owners within the Sea Colony residential subdivision

shall join in the execution of the Declaration recorded pursuant to this Consent Judgment. Further, it is intended that the Sea Colony Condominiums Association, Inc. shall also join in the execution of that Declaration. By the joinder of these parties and all lot owners within the Sea Colony residential subdivision, such Declaration shall serve to establish the terms and provisions set forth therein as effective against all of the parties in the same manner as restrictive covenants or the terms of condominium declarations may apply to the property owners. Conveyance of lots within the subdivision after the recording of the Declaration shall be subject to the terms and provisions of the Declaration, whether or not reference is specifically made in such conveyance to the Declaration.

12. Each of the parties to this agreement shall bear their own costs.

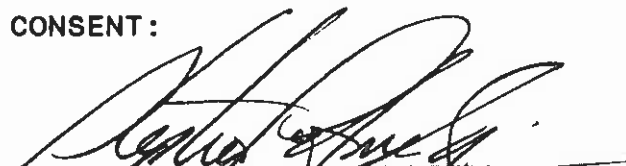
NOW THEREFORE, by consent, it is ordered, adjudged and decreed that the terms and provisions of this Consent Judgment preceding shall be effective and binding as to all of the parties to this lawsuit and shall constitute and be deemed an order and judgment of this Court.

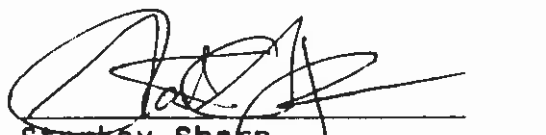
This the 29th day of OCTOBER, 1990.

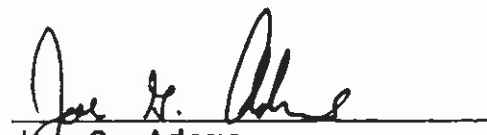

Judge Presiding

CONSENT:

BY:


Stephen F. Horne II
Attorney for the Plaintiffs


Starké Sharp
Attorney for the Defendants


Joe G. Adams
Attorney for the Defendant, Kaski