

EXHIBIT "B"

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

CASE NO.: 2020-020499-CA 01

THOMAS E. LAURIA, JEFF HOROWITZ
and GEORGE D. PERLMAN, on behalf of
Fisher Island Community Association, Inc.,

Plaintiffs,

vs.

FISHER ISLAND COMMUNITY
ASSOCIATION, INC., FISHER ISLAND
HOLDINGS, LLC, FISHER ISLAND
CLUB, INC., and PAR 7, LLC,

Defendants.

AMENDED VERIFIED DERIVATIVE COMPLAINT

Plaintiffs, Thomas E. Lauria, Jeff Horowitz and George D. Perlman, derivatively and on behalf of Fisher Island Community Association, Inc. ("**FICA**"), sues Nominal Defendant, FICA and Defendants, Fisher Island Holdings, LLC (the "**Developer**"), Fisher Island Club, Inc. (the "**Club**"), and PAR 7, LLC ("**PAR 7**"), and alleges as follows:

NATURE OF THE LAWSUIT

This case presents a basic question of public safety for the hundreds of people that access Fisher Island on a daily basis. Fisher Island lacks a connection to the mainland by bridge, causeway or tunnel. Day-to-day access to the island community is accomplished through continuous ferryboat service. This transportation system relies on critical ingress and egress components – such as ferry landings, barge landings and emergency ferry landings – which are the lifeline of Fisher Island’s residents and visitors.

In 2007, Developer settled several significant lawsuits against it by agreeing to transfer to FICA by 2022 certain land and property that comprises Fisher Island's transportation system. Thirteen years later, the Developer is attempting to back out of its promise to the Fisher Island community by seeking approval to develop, and do away with vital portions of the transportation system. In doing so, the Developer knowingly, purposely and brazenly is sacrificing the health, safety and welfare of the Fisher Island community for its own financial gain. Equity cannot sanction such abuse.

JURISDICTION AND VENUE

1. This is a derivative lawsuit seeking declaratory and injunctive relief under Fla. Stat. § 86.011.
2. Plaintiff, Thomas E. Lauria ("**Lauria**") is an individual resident of Miami-Dade County, Florida, and is *sui juris*.
3. Plaintiff, Jeff Horowitz ("**Horowitz**") is an individual resident of Miami-Dade County, Florida, and is *sui juris*.
4. Plaintiff, George D. Perlman ("**Perlman**") is an individual resident of Miami-Dade County, Florida, and is *sui juris*.
5. Nominal Defendant, FICA is a Florida corporation with its principal place of business in Miami-Dade County, Florida.
6. Defendant, Developer is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida.
7. Defendant, the Club is a Florida corporation with its principal place of business in Miami-Dade County, Florida.

8. Defendant, PAR 7 is a Delaware limited liability company with its principal place of business in Miami-Dade County, Florida.

9. Venue is proper in this circuit under Fla. Stat. §§ 47.011 and 47.051 because the cause of action accrued, and the Defendants have, or usually keep an office for transaction of their customary business in Miami-Dade County, Florida.

10. All conditions precedent to the filing of this action, if any, have occurred, been performed, or been excused or waived.

11. Plaintiffs have retained the undersigned attorneys to represent them in this action and have agreed to pay them a reasonable fee for their services.

FACTUAL ALLEGATIONS

The Parties

12. Plaintiffs are individual members and directors of FICA.

13. Developer is the successor in interest to Island Developers, Ltd., the prior developer of Fisher Island, a private island located in Biscayne Bay, Florida.

14. Club is a private membership club that owns certain club facilities, marina facilities and cable and commercial facilities located on Fisher Island.

15. FICA is the Master Homeowners' Association of Fisher Island. It originally was organized pursuant to the provisions of Chapter 617, Florida Statutes, and is presently subject to the provisions of Chapter 720, Florida Statutes. FICA is governed by its Articles of Incorporation (as amended) and By-Laws. Its primary responsibility is to manage, maintain and improve the common areas of Fisher Island for the benefit, safety and welfare of Fisher Island's residents. Those who purchase property on Fisher Island become FICA members.

16. Developer owns one hundred percent (100%) of the membership interest of PAR 7.

The 2007 Settlement Agreement

17. Fisher Island is governed by specific covenants, conditions and restrictions contained in (among other instruments) the Master Covenants for Fisher Island (the “**Master Covenants**”), recorded in Official Records Book 13008, Page 2052 of the Public Records of Miami-Dade County, Florida, and the Second Substituted Declaration of Restrictive Covenants (the “**Declaration**”), recorded in Official Records Book 14063, Page 977 of the Public Records of Miami-Dade County, Florida.

18. On January 10, 2007, FICA, Developer and the Club (among several other parties) entered into a settlement agreement (the “**2007 Settlement Agreement**”) pursuant to which the parties sought to resolve various lawsuits that were then pending. Attached hereto as Exhibit A is a true and correct copy of the 2007 Settlement Agreement.

19. The 2007 Settlement Agreement was structured such that it “expressly incorporated by reference” and attached as exhibits two other settlement agreements – (1) between Developer and the Club (the “**Club Agreement**”), and (2) between Developer and FICA (the “**FICA Agreement**”).

20. Paragraph 7.2(d) of the FICA Agreement required Developer to “[e]xecute and deliver to FICA for recording in the public records of Miami-Dade County, Florida, the Master Covenants Amendment,” through which Developer intended to amend the Master Covenants, as amended and supplemented through the date thereof. The parties attached to the FICA Agreement as Form 2.2-1 a copy of the agreed-upon form of “Amendment to Master Covenants for Fisher Island” (the “**Master Covenant Amendment**”).

21. On or about June 14, 2007, Developer signed and recorded the Master Covenant Amended in Official Records Book 25714, Page 0384, of the Public Records of Miami-Dade County, Florida. A true and correct copy of the signed and recorded Master Covenant Amendment is attached hereto as Exhibit B.

22. Pursuant to paragraph 1 of the Master Covenant Amendment, Developer amended the “Definitions” section of the Master Covenants by adding the following definition:

(r) “Transportation Property” shall mean and refer to the following: Ferry Landing on the Terminal Island in fee simple, including that portion leased from the State under a submerged Land’s Lease, the Island Ferry Landing and the Island Barge Landing and Emergency Ferry Landing, and all staging and marshaling areas to all such landings, all in fee simple absolute, the Barge Landing leased at the Port of Miami or any replacement Barge landing facility whether owned in fee simple by Declarant or leased by Declarant. Furthermore, the term “Transportation Property” shall include all property described in paragraph 9 of the Second Substitute Declaration including, without limitation, all personal property, all roads, alleyways, sidewalks, rights of way and bridges, free and clear of all encumbrances except for all matters of record as of the conveyance date, all applicable zoning and governmental land use restrictions, all restrictions under Master Covenants, Plan documents, Second Substitute Declaration and any and all restrictions running in favor of [FICA] and the residents of Fisher Island.

23. Pursuant to paragraph 4 of the Master Covenant Amendment, Developer amended Article XI of the Master Covenants by adding the following language:

Section 6. Transportation Property. Within fifteen (15) Business Days after the Exit Date (as defined in [FICA]’s Articles of Incorporation), at no cost to [FICA] other than sales tax or other similar transfer types of taxes which are due on such transfer, [Developer] shall assign and transfer to [FICA] the Transportation Property free and clear of all capital leases, liens and encumbrances, pursuant to a bill of sale and/or assignment in a form(s) reasonably satisfactory to [Developer] and [FICA]. [FICA] acknowledges that some or all of the real property constituting a portion of the Transportation Property may be leased by [Developer] from persons other than [Developer] or its affiliates and that such leased Transportation Property shall be transferred to [FICA] by the assignment of such lease(s) (to the extent permitted under such leases) to [FICA] and [FICA] shall assume all obligations under such lease(s) from and after the date of such assignment. [FICA] hereby agrees to indemnify and hold harmless [Developer] from and against all loss, liability, claim, damage, fine, penalty or expense

(including costs of investigation and defense and reasonable attorneys' fees and costs) incurred by, arising from or related to the Transportation Property including under or related to the leases from and after the date of the transfer and/or assignment.

24. FICA's Articles of Incorporation, as amended on January 10, 2007, and attached hereto as Exhibit C, define the term "Exit Date" as follows:

"Exit Date" shall mean the earlier of (i) fifteen (15) years after the date of this Amendment or (ii) the date on which eight hundred and seventy-one (871) residential units have (x) been constructed, (y) received a certificate of occupancy from the applicable governmental authorities and (z) sold to third party purchasers, on Fisher Island (as such term is defined in that certain Master Covenants for Fisher Island dated August 5, 1986 recorded in the Public records of Miami-Dade County, Florida at Official Record Book 13008, page 2052, as such declaration has been amended and supplemented through the date of this Agreement, excluding for this purpose any residential unit constructed by the Club or any successor owner to real property owned by the Club or [FICA] as of or after the date of this Amendment.

25. Thus, pursuant to the FICA Agreement and the Master Covenant Amendment, Developer must transfer to FICA the Transportation Property by January 25, 2022 (i.e., fifteen business days after the Exit Date).

The Amended and Restated Master Covenants

26. On or about April 21, 2009, Developer executed an Amended and Restated Master Covenants for Fisher Island (the "**Amended and Restated Master Covenants**"), which it recorded on or about April 23, 2009 in Official Records Book 26838, Page 4363, of the Public Records of Miami-Dade County, Florida. A true and correct copy of the signed and recorded Amended and Restated Master Covenants is attached hereto as Exhibit D.

27. Pursuant to the Amended and Restated Master Covenants, Developer sought to "completely restate the [Master Covenants] together with all of the amendments to the Original [Master Covenants] and the supplemental Declarations thereto," and to "entirely restate[], supercede[] [sic], and replace[]" the Master Covenants as amended.

28. The Amended and Restated Master Covenants expressly incorporates, reaffirms and adopts all prior amendments effectuated by Developer, including those amendments under the Master Covenant Amendment pertaining to the “Transportation Property.”

29. Specifically, Article I of the Master Covenant Amended contains the following definition of “Transportation Property:”

(s) “**Transportation Property**” shall mean and refer to the following: Ferry Landing on the Terminal Island in fee simple, including that portion leased from the State under a submerged Land’s Lease, the Island Ferry Landing and the Island Barge landing and Emergency Ferry Landing, and all staging and marshaling areas to all such landings, all in fee simple absolute, the Barge Landing leased at the Port of Miami or any replacement Barge Landing facility whether owned in fee simple by [Developer] or leased by [Developer]. Furthermore, the term “Transportation Property” shall include all property referenced in Paragraph 9 of the Second Substituted Declaration including, without limitation, all personal property, all roads, alleyways, sidewalks, rights of way and bridges, free and clear of all encumbrances except for all matters of record as of the conveyance date, all applicable zoning and governmental land use restrictions, all restrictions under the Master Covenants and Plan Documents and any and all restrictions running in favor of the Association and the residents of Fisher Island.

30. Additionally, Article XI of the Master Covenant Amendment contains the following language:

Section 6. Transportation Property. Within fifteen (15) Business Days after the Exit Date (as defined in the Association’s Articles of Incorporation), at no cost to [FICA] other than for the payment of sales tax or other similar transfer types of taxes which are due on such transfer, [Developer] shall assign and transfer to [FICA] the Transportation Property free and clear of all capital leases, liens and encumbrances, pursuant to a bill of sale and/or assignment in a form(s) reasonably satisfactory to [Developer] and [FICA]. [FICA] acknowledges that some or all of the real property constituting a portion of the Transportation Property may be leased by [Developer] from persons other than [Developer] or its affiliates and that such leased Transportation Property shall be transferred to [FICA] by the assignment of such leases(s) [sic] (to the extent permitted under such leases) to [FICA] and [FICA] shall assume all obligations under such leases(s) [sic] from and after the date of such assignment. [FICA] hereby agrees to indemnify and hold harmless [Developer] from and against all loss, liability, claim, damage, fine, penalty or expenses (including costs of investigation and defense and reasonable attorneys’ fees and costs) incurred by[,] arising from or related to the

Transportation Property including under or related to the leases from and after the date of the transfer and/or assignment.

31. Notably, Section 1, of Article XI of the Amended and Restated Master Covenants defines the term “Transportation System” as follows:

Transportation System. [Developer] and [FICA] each own or lease components (which are not part of The Properties or part of the Common Areas) of the Transportation System providing ferry boat service to and from Fisher Island, tug boat and barge services from the Port of Miami to Fisher Island, and parking facility at Terminal Island owned by [FICA], and shuttle bus service from transportation stations and parking facilities to points on Fisher Island, including the facilities of the [Club]. Said system, as same may be expanded, contracted or modified from time to time, is referred to in this Declaration as the “Transportation System.”

32. Additionally, Section 2, of Article XI of the Amended and Restated Master Covenants contains the following relevant language: “[T]he conveyance of the Transportation System to [FICA], with or without consideration and whether or not subject to any lease and accompanying rental obligations, mortgages, covenants, liens or other encumbrances will occur at the earlier to occur of (i) [Developer]’s Exit or (ii) the date upon which [Developer] chooses, at [its] sole discretion, to transfer title(s), leases, permits, etc.”

33. Thus, according to the Amended and Restated Master Covenants, Developer must transfer to FICA the Transportation Property and the Transportation System by January 25, 2022.

The 2020 Settlement Agreement

34. On or about June 5, 2020, Developer and the Club entered into a Settlement Agreement (the “**2020 Settlement Agreement**”) for the stated purpose of effectuating “the Parties desire to, among other things, make certain modifications to permissible uses, height restrictions and zoning entitlements of certain parcels on Fisher Island, convey certain real property and other rights, effectuate the turnover of certain board of director positions, release

certain claims, make payments and other matters as more fully described [t]herein[.]” A true and correct copy of the 2020 Settlement Agreement is attached hereto as Exhibit E.

35. Notably, paragraph 2.1 of the 2020 Settlement Agreement, titled “Conveyed Land,” provides in pertinent part as follows:

In accordance with and subject to Section 7.3, at the Closing, [Developer] shall convey to the Club good, marketable and insurable fee simple title to . . . (d) Alpha 20 (the current ferry landing on Terminal Island) and (e) the island side ferry landings (Alpha 21) on Parcel 6, and all improvements, structures and appurtenances located thereon (clause (d) and clause (e), collectively, the “Ferry Landings”)[.]”

36. Paragraph 5.2.5 of the 2020 Settlement Agreement further provides that, in exchange for Developer’s transfer to the Club of the Ferry Landings and other property, and payment to the Club of a cash payment of Two Million Five Hundred Thousand Dollars (\$2,500,000), the Club “agrees to affirmatively, fully and unconditionally support and cooperate with [Developer] in applying for and obtaining” certain development approvals (the “[Developer] Development Approvals”), including any “approvals by local, County, state or federal government authorities or agencies necessary to develop parcel 7,” on which the Ferry Landings is located.

37. Thus, the 2020 Settlement Agreement directly affects FICA’s rights by: (i) purporting to grant to the Club for purposes of development specific property that Developer contractually agreed years ago to transfer to FICA; and (ii) attempting to circumvent height and other zoning restrictions applicable to Fisher Island pursuant to the Master Covenants and the Declaration. Indeed, the 2020 Settlement Agreement is an obvious and brazen attempt by Developer to circumvent and reduce its clear obligations under the FICA Agreement and the Amended and Restated Master Covenants to transfer to FICA the Ferry Landings, and instead develop that property for its own financial gain.

38. Pursuant to Paragraphs 7.2 and 7.2.1 of the 2020 Settlement Agreement, “[t]he consummation of the conveyances and other covenants to be performed at the time of such consummation (the ‘Closing’) . . . under the [2020 Settlement Agreement] shall occur as promptly as practicable” once “[t]he [Developer] Development Approvals have been granted and are finally vested in [Developer] (the ‘Vested Approvals’).”

39. Developer owns the Transportation Property through its wholly owned subsidiary, PAR 7. Pursuant to the 2020 Settlement Agreement, PAR 7 has applied for, and actively been pursuing the Vested Approvals with the Club’s help and support.

40. On April 14, 2020, PAR 7 filed an application to rezone property that includes the Transportation Property. The Miami-Dade County Board of County Commissioners will consider that application during a public hearing scheduled for September 24, 2020.

Plaintiff’s Attempts to Obtain Action by FICA’s Board of Directors

41. Plaintiffs repeatedly have sought to compel a meeting of FICA’s board of directors to discuss the effect of the 2020 Settlement Agreement on FICA’s rights under the FICA Agreement and the Amended and Restated Master Covenants, but repeatedly have been rebuffed. Specifically, by email dated June 18, 2020, Mr. Lauria wrote the following email to FICA’s President and Chief Executive Officer, which Plaintiffs attach hereto as Exhibit F:

Robert,

As I trust you are aware, the [Club] has recently entered into a settlement with the Developer. Based on our preliminary review of the agreement and related materials, it appears to me, Jeff and George that it may impact FICA in a number of ways. Our concerns are heightened by the attached correspondence the FICA resident directors received today from the Club.

We would ask that you schedule a FICA Board meeting as soon as possible to discuss the Club/Developer Settlement. In that regard, we think it would be helpful if you could arrange for a representative of both the Developer and the

Club to attend the meeting to explain the terms of the deal from their respective perspectives.

Thanks,

Tom

42. Despite Mr. Lauria's reasonable concern and request, Mr. Sosa failed to schedule the requested meeting based on the pretext that "several board members [were] out of town or out of the country," and that he otherwise "ha[d] not received any feedback yet from the board as to availability." A copy of Mr. Sosa's response is attached hereto as Exhibit G.

43. Mr. Sosa has also rebuffed Mr. Lauria's multiple subsequent requests for a meeting by continuing to claim that FICA's other directors were unavailable for a meeting. A copy of the email exchanges between Mr. Lauria and Mr. Sosa are attached hereto as Composite Exhibit H.

44. FICA is governed by a nine-member board of directors, five of whom are appointed by Developer, one of which is appointed by the Club, and three of whom (Lauria, Perlman and Horowitz) are elected by the residential voting members of FICA. Accordingly, any further demand by Plaintiffs upon FICA to take action will be futile because Developer's appointees are unlikely to support any action that would compromise or undermine Developer's efforts to develop the Ferry Landings.

45. Irreparable action will result to FICA if Plaintiffs are required to wait any longer to file this lawsuit because the Miami-Dade County Board of County Commissioners will consider Developer's application for rezoning of portions of the Transportation Property during a public hearing scheduled for September 24, 2020.

46. On March 3, 2021, Plaintiffs made additional demand upon FICA, and receipt of this demand was acknowledged by counsel for FICA that same day. A copy of the March 3,

2021 additional demand letter to FICA and FICA counsel's acknowledgement of receipt is attached hereto as **Composite Exhibit I**.

47. To date no response to Plaintiffs' additional demand has been received.

48. Further irreparable harm will accrue to Plaintiffs if this lawsuit is further delayed due to Developer and PAR 7's ongoing efforts to rezone and develop land including the Transportation Property.

COUNT I - DECLARATORY JUDGMENT

49. Plaintiffs re-allege paragraphs 1 through 48 above.

50. In light of Developer's actions, as described above, Plaintiffs are in doubt concerning FICA's rights under the 2007 Settlement Agreement, FICA Agreement, Master Covenant Amendment, and Amended and Restated Master Covenants, as affected by the 2020 Settlement Agreement, which doubt Plaintiffs are entitled to have removed.

51. There is a bona fide, actual, present practical need for a declaration from this Court concerning the parties' rights under the 2007 Settlement Agreement, FICA Agreement, Master Covenant Amendment, and Amended and Restated Master Covenants, and, specifically, whether Developer may: (i) seek the rezoning of portions of the Transportation Property pursuant to the 2020 Settlement Agreement; (ii) transfer to the Club any portion of the Transportation Property pursuant to the 2020 Settlement Agreement; and (iii) seek approvals for the development of any portion of the Transportation Property and Transportation System, including the Ferry Landings.

52. Developer, as the entity that presently holds title to the Transportation Property, the Club, as the entity that will receive title to portions of the Transportation Property under the 2020 Settlement Agreement, and PAR 7, as the entity that has applied for approvals to redevelop

the Transportation Property and Transportation System have an actual, present, adverse and antagonistic interest in the subject matter of this action, either in fact or law, on the basis of acts and events that already have occurred and documents that already are in existence.

53. The existence or non-existence of the parties' rights and obligations under the 2007 Settlement Agreement, FICA Agreement, Master Covenant Amendment, Amended and Restated Master Covenants, and 2020 Settlement Agreement is dependent upon the facts, and the law applicable to the facts, which are the subject matter of this action.

54. All of the parties' interests are before the Court by proper process.

55. The relief that Plaintiffs seek in this action is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

56. Developer is improperly attempting to transfer to the Club, and PAR 7 is improperly attempting to develop property that Developer is contractually obligated to transfer to FICA by January 25, 2022. In essence, what Developer and PAR 7 are attempting to accomplish is to eliminate the ownership rights of FICA, and its members to the Transportation Property and the Transportation System.

57. FICA is entitled to a perpetual easement, an easement by implication, or an easement of necessity on, over, and across the boat basin located within Parcel 7 for the purpose of ingress and egress for the ferries between the ferry dock which comprises part of the Emergency Ferry Landing located on Parcel 7 and Fisherman's Channel.

58. Plaintiffs seek a declaration that: (i) the 2020 Settlement Agreement is void to the extent that it seeks to transfer any portion of the Transportation Property and Transportation System, including the Ferry landings; (ii) the 2007 Settlement Agreement, FICA Agreement, Master Covenant Amendment, and Amended and Restated Master Covenants preclude Developer from

transferring to the Club any portion of the Transportation Property, and PAR 7 from seeking approval to develop any portion of the Transportation Property; (iii) that Developer, PAR 7 and the Club are precluded by the 2007 Settlement Agreement, FICA Agreement, Master Covenant Amendment, and Amended and Restated Master Covenants from developing the Transportation Property as contemplated under the 2020 Settlement Agreement; and (iv) FICA is entitled to a perpetual easement, an easement by implication, or an easement of necessity on over, and across the boat basin located within Parcel 7 for the purpose of ingress and egress for the ferries between the ferry dock on Parcel 7 and Fisherman's Channel.

WHEREFORE, Plaintiffs respectfully request that this Court declare the parties' rights and for supplementary relief, including preliminary and mandatory injunctive relief, attorneys' fees and costs, and any other and further relief this Court deems equitable, just and proper.

COUNT II - INJUNCTIVE RELIEF

59. Plaintiffs re-allege paragraphs 1 through 48 above.

60. Plaintiffs will suffer irreparable harm resulting from Developer's attempts to transfer, and PAR 7's attempts to develop the Ferry Landings in contravention of the 2007 Settlement Agreement, FICA Agreement, Master Covenant Amendment, and Amended and Restated Master Covenants unless Defendants are enjoined from transferring and seeking approval to develop any portion of the Transportation Property, including the Ferry Landings.

61. Plaintiffs have no adequate remedy at law because the Transportation Property is of a unique character and value. Further, the Transportation Property and Transportation System are critical to the health, safety and welfare of FICA's members. Therefore, FICA's loss of its right to own the Transportation Property and the Transportation System cannot be compensated adequately in damages.

62. As a contracting party under the 2007 Settlement Agreement and FICA Agreement, FICA has a clear legal right to the relief sought in this complaint.

63. The public interest will be served by an injunction enforcing the 2007 Settlement Agreement, FICA Agreement, Master Covenant Amendment, and Amended and Restated Master Covenants.

WHEREFORE, Plaintiffs seek temporarily and permanently to enjoin: (i) Developer from transferring to the Club any portion of the Transportation Property or the Transportation System, including the Ferry Landings; and (ii) PAR 7 from developing the Transportation Property or the Transportation System as contemplated under the 2020 Settlement Agreement. Plaintiffs respectfully request that this Court also award Plaintiffs attorneys' fees and costs, and such other and further relief this Court deems equitable, just and proper.

Dated this 11th day of May, 2021.

**KLUGER, KAPLAN, SILVERMAN, KATZEN
& LEVINE, P.L.**

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VERIFICATION