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Steinberg & Steinberg, Ltd.
Attorneys at Law
20 N. Clark St.-Suite 2300
Chicago, IL 60602-5090

95-1802

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

BOARD OF MANAGERS OF RITCHIE
TOWER CONDOMINIUM ASSOCIATION, an
Illinois not-for-profit corporation,
Plaintiff,

vs.

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, not individually
but as Trustee U/T/A dated 7/9/85 a/k/a Trust
No. 64878; and HELEN FRIEDMAN, as Trustee
under Helen Friedman Declaration of Trust
dated 6/1/92,
Defendants

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, as Trustee under Trust
Nos. 64878 and 64787; HELEN FRIEDMAN, as
Trustee under Helen Freedman Declaration of Trust
dated 6/1/92; CHARLES RAMSAY, IRMGARD
RAMSAY; PAUL L. SCHUTT; GREGORY J.
WOULFE; ROBERT L. DOEDEN; JOYCE S
DAVENPORT; MICHAEL E. JOHNSON
ANNE E. WEISER

Counter-plaintiffs

vs.

RITCHIE TOWERS CONDOMINIUM
ASSOCIATION, an Illinois not-for-profit
corporation, a/k/a BOARD OF MANAGERS
OF RITCHIE TOWERS CONDOMINIUM
ASSOCIATION, individually and in its
representative capacity on behalf of all unit owners
Counter-defendants

RECORDED
INDEXED
FILED
MAY 19 1995
CLERK OF COURT
CHICAGO, ILL.

No. 95 CH 9185

Judge Michael B. Getty

95-1802

F	19.50	A
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CERTIFIED COPY OF COURT ORDER

This instrument affects the real estate described in attached Legal Description Rider

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CCG-2

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

0000060.0526

BOARD OF MANAGERS OF
RITCHE TOWER CONDOMINIUM
ASSOCIATION
Plaintiff-Counterdefendant

AMERICAN NATIONAL BANK, as
Trustee under Trust No. 64878 et al
Defendant-Counter-Plaintiff

NO. 95 CH 9/85

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ENTERED
CLERK OF THE CIRCUIT COURT
AURELIA PUCINSKI
JUL 22 1996
JUDGE / MICHAEL B. GETTY #178
DEPUTY CLERK / JEFF TROTT

ORDER

This matter coming to be heard this 22 day of July, 1996, on the motions by the parties for summary determination of legal issues pursuant to Section 2-1005 of the Code of Civil Procedure, the court having considered the briefs of the parties and having read into the record an opinion of the court, and finding that with respect to Counts I & II of the Complaint and Count I of the Counter-Complaint, there is no material dispute of fact and the Defendant-Counter-plaintiff are entitled to summary declaratory judgment as a matter of law.

IT IS HEREBY ORDERED

- Summary Declaratory Judgment is entered that Under Article IV, Section 3d of the Declaration of Condominium the owners of units with adjoining balconies or terraces are not responsible for the repair or maintenance of such balconies or terraces.
- This order constitutes a full and final adjudication of Counts I and II of the Complaint and Count I of the Counter-Complaint, and pursuant to Rule 304(c) this is a final order and there is no reason to delay enforcement or appeal.
- This matter is continued in status to August 28, 1996 at 9:45 with respect to remaining Counts II & III of the Counter-Complaint.

Atty No. 22026
 Name Stewby & Stewby, Ltd
 Attorney for Defendant-Counter-Plaintiff
 Address 20 W. Clark St.
 City Chicago IL 60602
 Telephone 312-269-0051

ENTER:

[Signature]
 Judge Judge's No. 19

95001800

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THIS INSTRUMENT AFFECTS THE REAL ESTATE LEGALLY DESCRIBED ON ATTACHED LEGAL DESCRIPTION AND/OR COURT FILE COPY
 CCG-2-75M-05-23-95 (53420210)

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I HEREBY CERTIFY THE ABOVE TO BE CORRECT.

DATE August 1996

Quinta P. Pinsky

CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILL.
THIS ORDER IS THE COMMAND OF THE CIRCUIT
COURT AND VIOLATION THEREOF IS SUBJECT TO THE
PENALTY OF THE LAW.

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

BOARD OF MANAGERS of RITCHEE)
TOWER CONDOMINIUM)
ASSOCIATION,)

Plaintiff,)

v.)

AMERICAN NATIONAL BANK,)

Defendant.)

NO. 95 CH 9185

REPORT OF PROCEEDINGS had at the hearing of
the above-entitled cause, before the Honorable MICHAEL
B. GETTY, Judge of said court, on the 22nd day of July,
1996.

P R E S E N T:

MR. DAVID SUGAR,
Appeared on behalf of the Plaintiff;

MS. FRANCES STEINBERG and MR. CHARLES STEINBERG,
Appeared on behalf of the Defendant.

JANET WALLACE, CSR
Official Court Reporter
Law/Chancery Division
Circuit Court of Cook County

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1 THE CLERK: Board of Managers versus American
2 National Bank.

3 MR. SUGAR: Good morning, your Honor.

4 David Sugar on behalf of the Plaintiff.

5 MS. STEINBERG: Good morning, your Honor.

6 Francis Steinberg and Charles Steinberg on
7 behalf of the easement owners.

8 THE COURT: Okay. The court has reviewed
9 everything that has been filed. Did the parties wish
10 to argue?

11 MR. SUGAR: I think everything and then some has
12 been said in the briefs. I really don't have anything
13 to add to what we have already said.

14 MS. STEINBERG: The only thing I would stress that
15 I don't think I stressed --

16 THE COURT: Now wait.

17 THE COURT: I'll be -- I'm more than happy to give
18 you five minutes, each side, or whatever you ask for to
19 argue.

20 MS. STEINBERG: Pretty much what I have to say is
21 in the briefs; would you agree?

22 MR. STEINBERG: Yes.

23 THE COURT: Neither side request oral argument?

24 MR. SUGAR: No, your Honor.

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1 THE COURT: All right, why don't you be seated
2 and the court will rule.

3 This matter comes before the Court on the
4 cross-motions of plaintiff/counter-defendant Board of
5 Managers of Ritchie Tower Condominium Association and
6 Defendants/counter-plaintiff's American National Bank &
7 Trust, Helen Friedman, Charles Ramsay, Ingrid Ramsay,
8 Paul Schatt, Gregory Wolfe, Robert Doeden, Joyce
9 Davenport, Michael Johnson and Anne Weiser, defendants,
10 for summary judgment pursuant to 735 ILCS 5/2-1005(d).

11 Defendants own condominium units in a
12 20-story high-rise residential condominium development.
13 Plaintiff is the board of managers of the condominium
14 association. Defendants are the only unit owners
15 whose units have adjoining balconies or terraces. The
16 Declaration of Condominium Ownership which was recorded
17 in 1972 provides as follows regarding the use of the
18 balconies and terraces.

19 All balconies and terraces, if any,
20 shall be a part of the Common Elements and not
21 part of any individual unit; however, a valid
22 exclusive easement is hereby established for the
23 benefit of each unit and its owner, consisting of
24 the right to the exclusive use and possession of

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1 that balcony and terrace or those balcony and
2 terraces, if any, direct access to which is
3 provided from his respective unit, and which is
4 located outside of and adjoining his respective
5 unit.

6 The Declaration also addresses the
7 maintenance and repair of balconies and terraces which
8 is at issue in the present case. The Declaration
9 provides:

10 Unless and until such time as the Board
11 of Managers determines to the contrary, each unit
12 owner shall be responsible for repair, maintenance
13 and appearance of the balconies and terraces, the
14 exclusive use and possession whereof is extended
15 hereby, at his own expense, including, without
16 limitation, responsibility for breakage, damage,
17 malfunction and ordinary wear and tear.

18 In 1992, the Board authorized repairs to the
19 balconies adjoining Units 30-C and 30-D. The costs
20 incurred for the repair was \$69,325. The Board
21 assessed one-half the cost to the owner of the unit
22 30-C and assessed one-half of the cost to the owner of
23 Unit 30-D. The unit owners contend that they were not
24 liable for those costs of the repairs and the Board

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1 brought this declaratory judgment action against the
2 two unit owners. A counter-complaint was filed by the
3 two unit owners as well as the other unit owners whose
4 units had adjoining balconies or terraces.

5 The parties have brought cross-motions for
6 summary judgment seeking a decision by the Court as to
7 whether the Board ever determined that the unit owners
8 would not be responsible for the repair and maintenance
9 of the balconies and terraces. If such a
10 determination was made, the owners of Unit 30-C and
11 30-D would not be responsible for the costs of the
12 repairs made to their balconies. If such a
13 determination was not made, the unit owners would be
14 responsible for the costs.

15 Defendants contend that the Board made a
16 determination that the unit owners would not be
17 responsible for the repairs and maintenance of the
18 balconies and terraces. Defendants points to the fact
19 that on five separate occasions the Board unanimously
20 voted to make repairs to certain balconies
21 and terraces at the common expense and that at no time
22 did the Board require a unit owner to pay for similar
23 repairs. Defendants also point to the fact that the
24 Board refused the request of two unit owners to enclose

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1 their terraces in glass during the 1970's on the
2 grounds that the terraces were not their property.

3 Defendants argue that if the Court were to
4 find that no determination was made by the Board, the
5 Board would be allowed to arbitrarily choose to repair
6 certain balconies and terraces while charging other
7 unit owners for similar repairs. Defendants contend
8 that this treatment would improperly create two classes
9 of membership.

10 Plaintiff contends that no determination has
11 been made. While plaintiff acknowledges that it has
12 voted to approve repairs of certain balconies and
13 terraces as a common expense, it argues that it never
14 adopted a specific resolution to the effect that all
15 balconies owners and terrace owners would no longer be
16 responsible for the repair and maintenance of their
17 balconies and terraces. It is plaintiff's contention
18 that such a formal resolution would need to be adopted
19 because of a separate provision of the Declaration
20 which provides that the Board's failure to enforce an
21 obligation or condition in the Declaration does not
22 constitute a waiver. Further, plaintiff argues that
23 the prior repairs approved by the Board were for minor
24 repairs whereas the repairs to units 30-C and 30-D

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1 constituted major repairs which the Board has not
2 approved.

3 The Court finds that the Board did make a
4 determination that the unit owners would not be
5 responsible for the repair and maintenance of the
6 balconies and terraces. It is uncontested that on
7 numerous prior occasions the Board unanimously approved
8 the repairs of certain balconies and terraces. The
9 Court must presume that the Board acted legally and
10 properly each time it resolved to make the repairs.
11 The Court also notes that no one has ever challenged
12 the Board's authority to approve the repairs.

13 The actions of the Board are consistent with
14 a finding that a determination has previously been made
15 on numerous separate occasions the Board acted
16 unanimously in approving, through resolution, to make
17 the balcony and terrace repairs. The Board never
18 charged any unit owner for the cost of the repairs.
19 While the Board's failure to enforce a provision of the
20 Declaration does not constitute a waiver, this does
21 not prevent the Court from considering this factor when
22 deciding if a determination was made. Further, the
23 uncontested affidavit of Paul Schutt indicates that in
24 the past the Board refused to allow unit owners to

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1 enclose their terraces in glass because Board did not
2 believe that the terraces were the property of the unit
3 owners.

4 Contrary to the argument of the Board, the
5 Declaration does not state that the Board must make the
6 specific determination through a formal resolution.

7 The Declaration simply states that unless and until the
8 Court determines to the contrary, the unit owners are
9 responsible. The Declaration does not address how that
10 determination was to be made.

11 As the Court must presume that the Board has
12 acted legally and in accordance with the Declaration,
13 the Court finds the Board determined that the unit
14 owners would not be responsible for the repair and
15 maintenance of the balconies and terraces.

16 Accordingly, the Court grants defendants' motion for
17 summary judgment on this major issue pursuant to 735
18 ILCS 5/2-1005(d).

19 Counsel, you may draw an appropriate order.

20 MS. STEINBERG: Thank you, your Honor.

21 (WHEREUPON, the Court heard other
22 matters, after which time the
23 following proceedings were had.)

24 THE COURT: State your names.

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1 MR. STEINBERG: Charles Steinberg for the
2 defendants/counter-plaintiffs.

3 MR. SUGAR: David Sugar for the plaintiffs.

4 Your Honor, we're in agreement as to the form
5 of the order. The only thing we need here -- there's
6 two issues. One is there are two remaining counts to
7 the counterclaim that have not been disposed of. The
8 plaintiff's claim is taken care of, the first count of
9 the counterclaim is taken care of. We'd like a status
10 date and see if we can resolve it between now and then.
11 And counsel would like an order to make this final and
12 appealable.

13 MR. STEINBERG: 304(a) as to what's been disposed
14 of. Because the remaining two issues are really very
15 different and unrelated, but the court of course will
16 have to agree to the 304(a) language.

17 THE COURT: What's your position on that?

18 MR. SUGAR: I would have could consult with my
19 client. I don't believe that there's going to be an
20 appeal. We would have no objection to the entry of
21 the language.

22 THE COURT: Fine. Do you want to draw that up
23 separately

24 MR. STEINBERG: No.

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1 MR. SUGAR: He writes small.

2 THE COURT: Why don't you add it to -- as to
3 form, you're in complete agreement then on this. Just
4 add it in there.

5 MR. SUGAR: And we need a date.

6 THE COURT: I'll sign one order and I'll give you
7 a date right now.

8 Did you say 30 days?

9 MR. SUGAR: It's really not my call. The hope is
10 that the few remaining issues can be worked out.

11 Counsel, 30 days, 45 days?

12 MS. STEINBERG: I would think either the end of
13 August or the first of September.

14 I'm informed by one of the people that were
15 here and just left that work is already being done.
16 The major issues under Count 2 were damages caused in
17 the past by using the balconies and terraces for
18 staging the big, you know the swing stages for doing
19 repairs to the facade.

20 THE COURT: How about 9:45 on August 28?

21 MS. STEINBERG: That's fine with me.

22 MR. SUGAR: That's fine.

23 THE COURT: We'll see you then. Good luck.

24 (WHICH WERE ALL THE PROCEEDINGS HAD.)

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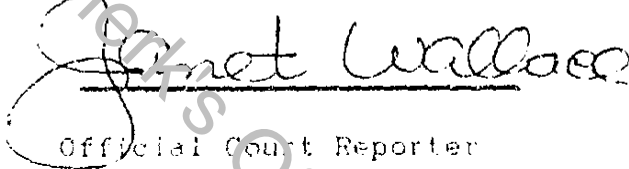
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

I, Janet Wallace, an Official Court Reporter
for the Circuit Court of Cook County, County
Department, Law/Chancery Division, do hereby certify
that I reported in shorthand the proceedings had at the
hearing of the above entitled cause on the 22nd day of
July, A.D. 1996; that I thereafter caused the foregoing
to be transcribed into typewriting, which I hereby
certify to be a true and correct transcript of the
proceedings had before the Honorable MICHAEL B. GETTY,
Judge of said court.


Official Court Reporter
Janet Wallace
CSR. NO. 084-001736

Dated this 5th day
of August, 1996.

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LEGAL DESCRIPTION RIDER

The North 20.16 feet of Lot 3, all of Lots 4 and 5, Lot 6 (except that part of said Lot 6 lying North of a Line drawn Westerly from a point on the East Line of said Lot 6, 3.85 feet South of the North East corner of said Lot 6 to a point on the West Line of said lot 6, 3.68 feet South of the North West Corner of said Lot 6). All of Lots 10, 11, and 12 and Lot 13 (except that part of said Lot 13 described as beginning at the South West corner of said Lot 13, running thence Northerly along the Westerly line of said Lot 13, said line being also the Easterly line of Astor Street, a distance of 29.87 feet, thence East a distance of 74.75 feet the Easterly line of said Lot 13, at a point 29.77 feet North of the South East corner of said Lot, thence Southerly along the Easterly line of said Lot 13, a distance of 29.77 feet to the South East corner of said Lot 13, thence West along the South line of said Lot 13, a distance of 73.14 feet, to the point of beginning) all in Block 3 in H. O. Stone's Subdivision of Astor's Addition to Chicago in Section 3, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Property Index Number: 17-03-109-019-0000

Street Address: 1310 N. Ritchie Court Chicago, Illinois. 60601

Submitted to Illinois Condominium Property Act by Document No. 219131482

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