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## Icon Brickell Condo Owner's Lawsuit Contesting W Hotel Control Survives Appeal

An Icon Brickell Tower 3 owner sued the condo association over how much control was given to the W Miami Hotel in the same tower.

By Lidia Dinkova | October 09, 2020



**John Annesser, partner at Annesser Armenteros, and Icon Brickell attorney Mark Bideau, shareholder at Greenberg Traurig. Courtesy Photo**

A lawsuit survived appeal in an Icon Brickell condominium owner's challenge to provisions that leave residents with the tab for the shared areas in a building that includes the W Miami Hotel.

New Media Consulting LLC, which owns Unit 4307 in Icon Brickell Tower 3, won summary judgment in its suit claiming the condo declaration broke state law by giving ownership and control of the shared facilities to the hotel owner without cost or responsibility for assessments.

New Media, whose managers are listed as Fernando Samaniego and Natalia Ros in state corporate records, sued the building's condo association in 2018. W Miami owner Senyar Miami Holding LLC was not a defendant and didn't participate when summary judgment was granted to the unit owner.

The 50-story Icon Brickell Tower 3 consists of the 148-key W Miami, formerly the Viceroy Hotel, on the lower floors, and the 372-unit condo starting on the 16th floor in a complex with stunning views of Biscayne Bay, the Miami River, downtown Miami and the Brickell financial district.

New Media alleged the condo declaration setting the ground rules for the building gave W Miami too much authority in violation of the Florida Condominium Act. The Third District Court of Appeal affirmed the ruling by Miami-Dade Circuit Judge Daryl Trawick.

He found several parts of the declaration are void and ordered the association to change them to meet the requirements of state law.

([//images.law.com/contrib/content/uploads/documents/392/105366/IconBrickellTrialCourtOrder.pdf](https://images.law.com/contrib/content/uploads/documents/392/105366/IconBrickellTrialCourtOrder.pdf))

The appellate panel focused on the treatment of common areas, which are minimal, and the dominant shared facilities, including the hotel and residential lobbies.

The condo declaration designates all "property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements," along with wires, conduits, pipes, ducts, transformers, cables, residential lobby and elevators as shared facilities, Third DCA Judge Bronwyn Miller wrote.

"This recharacterization, and the resultant expropriation of undivided common ownership, indubitably contravenes the edict of the act," Miller wrote. Judges Edwin Scales III and Monica Gordo concurred.

The law grants unit owners an undivided share in common elements.

Senyar was granted a motion for joinder on appeal and was represented by Greenberg Traurig shareholders Mark Bideau in West Palm Beach and Elliot Scherker and Brigid Cech Samole in Miami and associate Katherine Clemente in Miami. They had no comment by deadline.

They argued the declaration is different from rules for a pure condo tower but typical for a building with condos and a hotel.

"The majority of what would otherwise be considered common elements under control of a condominium association are instead placed into a separate condominium unit — the hotel unit — and are owned by the hotel unit owner, such as Senyar," attorneys wrote in the brief signed by Scherker. "That structure is essential to allow the hotel to control areas that are critical to its hotel business and to allow the hotel to conform to brand standards."

Trawick's order upended the structure necessary for the hotel even though the state law gives "broad discretion" on tower areas that can be designated as common elements, Scherker maintained. Also, all potential buyers were on notice that common elements were to be minimized.

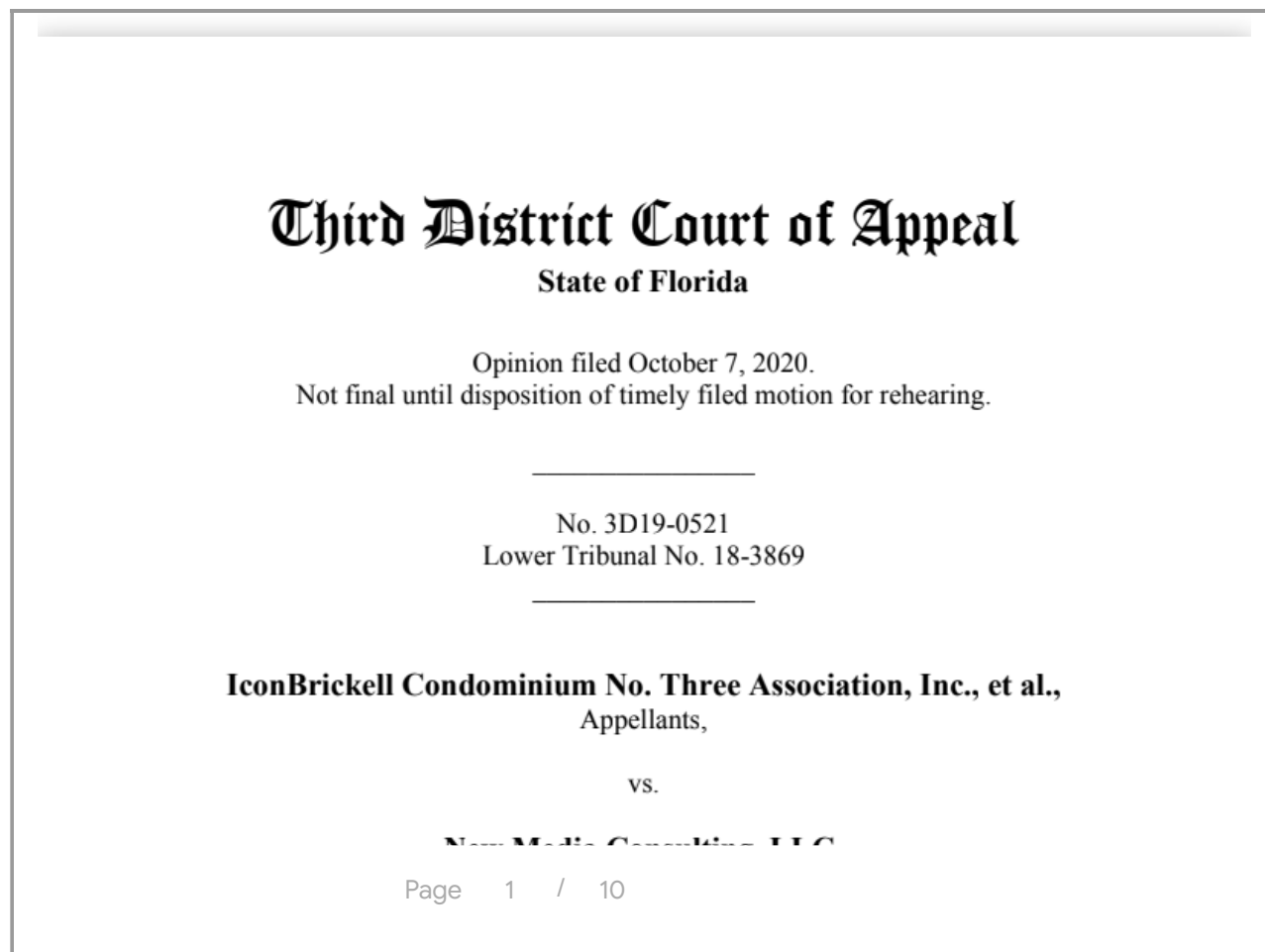
Icon Brickell trial court attorney, Kaye Bender Rembaum associate Lauren Schwarzfeld in Pompano Beach, didn't respond to a request for comment.

New Media's attorney, Annesser Armenteros partner John Annesser in Coral Gables, said the appellate opinion recognized the condo unit owners' rights. He represented New Media with associate Megan Conkey Gonzalez.

"The Third DCA correctly found the declaration at Icon Brickell condo tower three was an abuse of the association's authority and was detrimental to each of the unit owners within that building," Annesser said. The opinion "permitted the unit owners to determine their own destiny with respect to the maintenance and repair of their facilities."

The tower involved in the litigation is part of the three-tower Icon Brickell complex built in 2008 by Miami's biggest condo developer, Jorge Pérez's Related Group.

**Read the opinion:**



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