

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

January 11, 2010

Linda M. Schuett  
410.268.0881; 410.269.0045  
301.261.1668  
lschuett@linowes-law.com

Clerk, Circuit Court for  
Anne Arundel County  
Courthouse, 7 Church Circle  
Annapolis, Maryland 21401

RE: Riviera Community Improvement Association, Inc., et al. vs. Riverbea Corporation -  
Case No. C-09-146110

Dear Clerk:

Please accept for filing the enclosed Reply Memorandum in Support of Defendants' Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted Or, In The Alternative, For Summary Judgment in the above-referenced proceeding.

If you have any questions concerning this filing, please give me a call.

Thank you.

Very truly yours,

LINOWES AND BLOCHER LLP



Linda M. Schuett

LMS:sbw

Enclosures

cc: Kathleen E. Byrne, Esquire ✓  
Henry D. McGlade, Esquire

F:\Riverbea Corporation\Litigation - RCIA\Letters\Clerk Ltr 02.doc

**IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY**

Riviera Community Improvement  
Association, Inc., et al.

\*

\*

Plaintiffs

\*

v.

\*

Circuit Court Case No.  
C-09-146110

Riverbea Corporation, et al.

\*

Defendants

\*

\* \* \* \* \*

**REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS FOR FAILURE  
TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED  
OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Defendants, Riverbea Corporation ("Riverbea"), Robert Snyder, William Guizzardi, Brett Scheibe, and Edward Patrick Kiley, by their attorney, Linda M. Schuett and the law firm of Linowes and Blocher LLP, have filed pursuant to Rule 2-322 a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted or, in the Alternative, for Summary Judgment ("Motion to Dismiss or for Summary Judgment"). Plaintiffs have filed an Opposition that, as explained below, fails to address the issues raised in the Motion.

**MATERIAL UNDISPUTED FACTS**

RCIA, a voluntary homeowners' association, was formed in 1953. RCIA is responsible for administering the shore erosion control district that was established years ago under State law. Article IX of RCIA's bylaws sets forth the duties of RCIA's Erosion Advisory Committee. It requires, among other things, that the Committee prepare the erosion control budget, identify and prioritize projects, obtain bids, recommend appropriate

contractors, and administer related activities, such as cash-flow, permits, and project acceptance. See Exhibit 2 to the Motion to Dismiss or for Summary Judgment.

Riverbea was formed in 1961. In March of 1961, Riverbea acquired a strip of waterfront property known as Riviera Walk and a property known as the Triangle. See Plaintiffs' Complaint, Exhibit B. The deed sets forth the right of residents to use Riviera Walk in common with others, but does not set forth any such right with respect to the Triangle. In April of 2007, Riverbea sold the "Triangle" to Defendant Tiernan for \$145,000.00. Approximately a month after the March, 1961 acquisition of Riviera Walk and the Triangle, Riverbea acquired the community's playground. See Plaintiffs' Exhibit A, page 1. The deed provides that residents may use the playground for recreational purposes and sets forth Riverbea's rights and authority with respect to maintenance.

Riverbea is the owner of all piers that extend from Riviera Walk. See Annotated Code of Maryland, Environment Article, § 16-201 (a). No resident of the community may construct a pier without Riverbea's permission. See Anne Arundel County Code, § 18-2-204 (c) and the deed attached to Plaintiffs' Complaint as Exhibit B at page 12. Plaintiffs Paul and Karin Buddock, Eric and Laura Etzel, and Michael Young maintain piers on Riviera Walk that are illegal because, among other reasons, Riverbea did not consent to the construction of the piers.

In 1967, Riverbea entered into an agreement with respect to an existing pier that was constructed and maintained by a corporation called The Riviera Beach Yacht Club, Inc (the "Club"). The Agreement allows the Club to act as the "trustee" of the pier for purposes of maintenance, to allot slips to "residents of Riviera Beach proper," and to assess and collect an annual donation to cover maintenance. See Plaintiffs' Exhibit C (emphasis added).

## ARGUMENT

### **I. THE BUDDOCKS, ETZELS, AND YOUNG HAVE STANDING TO MAINTAIN A CLAIM WITH RESPECT TO THE ILLEGAL PIERS THAT THEY MAINTAIN. OTHERWISE, ALL PLAINTIFFS LACK STANDING TO SUE.**

#### **A. RCIA LACKS STANDING BECAUSE IT HAS NO PROPERTY INTEREST THAT COULD BE AFFECTED BY ANY OF THE ALLEGATIONS IN THE COMPLAINT.**

As set forth in the Motion to Dismiss or for Summary Judgment, Maryland has long held that an association like RCIA lacks standing to sue if it has no property interest of its own, separate and distinct from that of its individual members, that might be affected by any of the alleged acts under attack. Citizens Planning & Housing Asso. v. County Executive of Baltimore County, 273 Md. 333, 345, 329 A.2d 681, 687 (1974). See also Evans v. State, 396 Md. 256, 914 A.2d 25 (2006).

Here, it is undisputed that RCIA does not own in fee simple any of the real property at issue in this case. Opposition at 4. It is likewise undisputed that Riverbea is or was the owner in fee simple of all such property. Id. In an attempt to avoid this problematic situation in terms of standing, Plaintiffs claim in their Opposition, as they do in their Complaint, that RCIA has an "equitable interest" in the property owned by Riverbea. See Complaint, ¶ 22 and Opposition at 8. In their Opposition, Plaintiffs claim that this "equitable interest" arises exclusively from language in RCIA's own Articles of Incorporation. Opposition at 8. The argument has no merit.

RCIA claims, in essence, that it can create for itself a property interest in someone else's property by language inserted into its own Articles of Incorporation. If this proposition were true, anyone could incorporate, insert language about an ability to use, defend, or maintain someone else's property, and then claim an equitable interest in that other person's property. Plaintiffs cite no law to support this baseless theory because, as a matter of law, equitable interests in real property are not created through Articles of Incorporation.

Understandably, Plaintiffs never respond to the argument made in the Motion to Dismiss or for Summary Judgment that if equitable interests in property were created in this fashion, the land records would never reveal the true state of title of any property.<sup>1</sup>

Whether or not RCIA has an equitable interest in the real property owned by Riverbea is a pure question of law for this Court to decide. As a matter of law, RCIA does not have any such interest and, therefore, lacks standing to maintain this lawsuit and should be dismissed as a party Plaintiff.

**B. THE INDIVIDUAL PLAINTIFFS LACK STANDING BECAUSE THEY HAVE NOT SUFFERED SPECIAL DAMAGE THAT DIFFERS IN CHARACTER AND KIND FROM THAT SUFFERED BY MEMBERS OF THE COMMUNITY AS A WHOLE, EXCEPT THAT THE BUDDOCKS, THE ETZELS, AND YOUNG HAVE STANDING WITH RESPECT TO THOSE CAUSES OF ACTION RELATING TO THE THREE ILLEGAL PIERS THEY MAINTAIN.**

As set forth in the Motion to Dismiss or for Summary Judgment, Maryland law provides that "an individual ... 'has no standing in court unless he has also suffered some kind of special damage from such wrong differing in character and kind from that suffered by the general public,'" Evans v. State, 396 Md. 256, 328-329, 914 A.2d 25 (2006), quoting Medical Waste v. Maryland Waste, 327 Md. 596, 612-13, 612 A.2d 241, 249 (1992). (Other citations omitted.) Under this test, the only individuals in this suit with standing are the Plaintiffs who maintain three illegal piers (Paul and Karin Buddock, Eric and Laura Etzel, and Michael Young) because they have, arguably, suffered special damage that is different from the community at large. However, these individuals have standing with respect to claims relating to those three specific piers only. See Paragraph 37 g of Count IV of the Complaint, relating to Riverbea's alleged arbitrary removal or threatened removal of piers, and Count VIII, which

---

<sup>1</sup> Plaintiffs allege, without explaining the significance, that RCIA has maintained community property in the past and that it manages shore erosion control funds collected through a special taxing district. Opposition at 8. Plaintiffs cite no authority for the proposition that maintaining property or managing the use of taxes creates an equitable interest in property. Defendants respectfully suggest that no such authority exists.

seeks injunctive relief relating, in part, to the illegal piers. The Buddocks, Etzels, and Young have standing to pursue these claims -- and these claims alone.

With respect to all other allegations of the Complaint, none of the individual plaintiffs has suffered any damage that is different in kind or quality from the individuals in the community as a whole. And, Plaintiffs never allege -- or even mention -- any special damage suffered by the individual Plaintiffs, either in the Complaint or in their Opposition. See Opposition at 7-8.

Instead, the individual Plaintiffs claim they have standing because all residents have a property interest in the community property by virtue of their right to use it in common with other residents and because all residents have the right to seek enforcement of various restrictions placed on certain individual lots. Opposition at 7-8. Neither allegation, however, constitutes an allegation that the individual Plaintiffs have somehow been damaged in a manner that is distinct in both character and kind from that allegedly suffered by the community as a whole. Neither allegation explains how these individual Plaintiffs are damaged in a way that is distinct from all residents in the community. Thus, except for the noted exceptions, the individual Plaintiffs should be dismissed from this suit for lack of standing.

## **II. ALL COUNTS IN THE COMPLAINT FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

### **A. COUNT I FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE RIVERBEA WAS ENTITLED AS A MATTER OF LAW TO SELL THE TRIANGLE.**

As argued in the Motion to Dismiss or for Summary Judgment, the two deeds by which Riverbea acquired title to property in the community make it abundantly clear which properties are subject to a right of use in common with other residents of the community. The 1961 deed to the playground lot expressly gives residents the right "to use the said area for

recreational purposes." Similarly, the 1961 deed to Riviera Walk and the Triangle expressly sets forth the right of residents to use Riviera Walk in common with others, but does not set forth any such right with respect to the Triangle. The deed provides:

The areas granted to [Riverbea] are subject to the restrictions on use as hereinafter set forth:

1. The owner or owners of the fee simple interest ... [or] leasehold interest in each lot ... shall have the right to use the Beach Area in common with other owners... . All of the Beach Area is herein referred to as Riviera Walk. It is to be noted that on some of the recorded Plats ... there appears to be a separation between Riviera Walk and the Beach Area. Riviera Walk is, in fact, the beach area and comprises the entire area between the water side of the individual lots and Stony Creek or Patapsco River.

(Emphasis added.)

Plaintiffs state in their Opposition that the 1961 deed provides that the "areas granted to the party of the second part [Riverbea] are subject to the restrictions on use hereinafter set forth." Opposition at 10. This is clearly an accurate statement. Indeed, it is quoted in the preceding paragraph. What Plaintiffs fail to address, however, is that the "restrictions set forth" do not include a right of use in common with respect to the Triangle. Plaintiffs claim that Defendants take the quoted language out of context, but they never then quote what additional language from the deed is needed to place the language in context. This is because there is no such additional language. The language of the deed is plain and unambiguous, and it does not create a use in common with respect to the Triangle. As a matter of law, the Triangle is not encumbered by any such restriction and Riverbea had the legal right to convey the Triangle free and clear of any such restrictions.

Plaintiffs apparently concede -- because they never address in their Opposition -- the argument made in Defendants' Motion that even if the Triangle is somehow encumbered by a use in common provision, this does not mean that Riverbea was prohibited from selling it. There is no restraint on alienation clause in the 1961 deed. Thus, Riverbea was entitled to sell

the Triangle and, at worst, the property was sold subject to any restrictions of record. Indeed, Plaintiffs recognize that Riverbea potentially had the right to sell the Triangle, subject to any existing use restrictions, by alleging in their Complaint that "[e]ven if Tiernan has title to the Triangle, his ownership is subject to [a] right to the use in common with other property owners in Riviera Beach [of] all the Community Property." Complaint, ¶ 26.

Finally, Plaintiffs argue that the Triangle is not a separate lot, and that a sale without first having gone through subdivision therefore violates Md. Ann. Code art. 66B, § 5.05 (2009). Opposition at 11. However, it makes no difference in this lawsuit whether the Triangle is or is not a separate lot because the General Assembly has vested the County with all power to enforce alleged violations of this provision. See Article 66B, §5.05 (c).

Whether or not the Triangle is encumbered by a "use in common" deed restriction and whether or not a sale may occur even if the property were subject to any such restriction are pure questions of law. Riverbea respectfully requests that this Court enter a judgment on Count I of the Complaint declaring that Riverbea was entitled to sell the Triangle.

**B. COUNT II FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE RCIA HAS NO RIGHT TO MAINTAIN RIVERBEA'S PROPERTY AND BECAUSE THIS COURT HAS NO POWER TO ALTER LEGAL PROVISIONS IN RIVERBEA'S CHARTER AND BYLAWS.**

Count II of Plaintiffs' Complaint alleges that it was the "intention" of the original developer that RCIA would operate and maintain community property. Complaint, ¶ 28. In this Count, Plaintiffs seek an order that RCIA has the right to manage, operate, and maintain the property owned by Riverbea and an order declaring that Riverbea's Board of Directors be voted in by the residents of the Riviera Beach subdivision.

As argued in the Motion to Dismiss or for Summary Judgment, the request for an order that RCIA has the right to manage, operate, and maintain Riverbea's property is frivolous. In the Motion, Riverbea points out, with citations, that a fee simple estate is the



highest form of ownership a person can have in real property, that the alleged "intention" of the developer to have RCIA maintain property owned by Riverbea is irrelevant, and that, in any event, that intention is nowhere evidenced by any deed or other document. Riverbea also points out that the documentation is precisely to the contrary -- it establishes Riverbea's right to maintain the property it owns.

As also argued in the Motion to Dismiss or for Summary Judgment, the request for an order declaring that Riverbea's Board of Directors be voted in by the residents of the Riviera Beach subdivision is likewise frivolous. Riverbea points out in the Motion that Article 5 of Riverbea's Articles of Incorporation provides that vacancies are filled as provided in Riverbea's bylaws and that Riverbea's bylaws contain provisions relating both to the removal of officers, members, or employees and to the filling of vacancies. Riverbea is unaware of any authority upon which this Court could enter an order modifying legal provisions in Riverbea's Articles of Incorporation and bylaws.

In their Opposition, Plaintiffs do not address even one of these arguments. Instead, they argue that Riverbea owns the property subject to the right of residents to use it in common with others. Opposition at 11-12. Riverbea has never disputed this point with respect to the playground or Riviera Walk. This point, however, has nothing to do with who has the right to operate and maintain the property owned by Riverbea. Plaintiffs' argument likewise has nothing to do with whether or not this Court can legally order a change in Riverbea's corporate documents. Plaintiffs failure to address these arguments is telling -- they simply have no response to Defendants' Motion.

Count II of Plaintiffs' Complaint fails to state a claim upon which relief can be granted because RCIA has no right to maintain property owned by Riverbea and this Court

has no power to alter legal provisions in Riverbea's charter and bylaws. Riverbea requests that this Court enter summary judgment in favor of Riverbea with respect to Count II.

**C. COUNT III FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE THE 1967 AGREEMENT BETWEEN RIVERBEA AND THE RIVIERA BEACH YACHT CLUB, INC. DOES NOT ASSIGN AN EXCLUSIVE RIGHT TO THE CLUB TO USE COMMUNITY PROPERTY.**

Count III of Plaintiffs' Complaint alleges that Riverbea, in an Agreement entered into in 1967, assigned to The Riviera Beach Yacht Club, Inc. (the "Club") "the exclusive right to use a portion of Community Property for a private yacht club." Complaint, ¶ 33. Based on this allegation, Plaintiffs seek an order declaring the 1967 Agreement to be invalid and therefore void.

In its Motion to Dismiss or for Summary Judgment, Riverbea argued, citing the specific provisions of the Agreement, that there is nothing in the 1967 Agreement that grants exclusive use of community property to the Club. In their Opposition, Plaintiffs recognize, as they must, that Count III alleges that the 1967 Agreement contradicts the terms of the 1961 deeds." Opposition at 12 (emphasis added). But Plaintiffs never then point out what language in the Agreement itself violates the terms of the deeds. This can only be explained by the fact that there is no such language. Plaintiffs seem to argue, as a factual matter, that the Club does not allow residents to enter onto the community property where the pier is. Opposition at 12-13. This, of course, has nothing to do with the language of the 1967 Agreement itself or with the allegations of Count III. As a matter of law, Count III fails to state a claim upon which relief can be granted because the 1967 Agreement does not assign an exclusive right to the Club to use community property. Riverbea therefore requests that this Court enter an order dismissing Count III as to Riverbea.

**D. COUNT IV FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE THE PLAINTIFFS HAVE NOT ALLEGED FACTS THAT WOULD SUPPORT A FINDING OF CONSTRUCTIVE FRAUD ON RIVERBEA'S PART OR ON THE PART OF ITS OFFICERS AND DIRECTORS IN THEIR INDIVIDUAL CAPACITIES.**

Count IV of Plaintiffs' Complaint is for breach of fiduciary duty (constructive fraud).

The Count is against not only Riverbea but also its directors individually. As was fully argued in the Motion to Dismiss or for Summary Judgment, Riverbea's decisions are governed by the business judgment rule and are not to be questioned by a court in the absence of fraud or bad faith. NAACP v. Golding, 342 Md. 663, 673, 679 A.2d 554 (1996). (Citation omitted.) And, Riverbea's officers and directors have no personal liability for Riverbea's acts in the absence of fraud or some well-defined paramount equity. See Hildreth v. Tidewater Equip. Co., 378 Md. 724, 733, 838 A.2d 1204, 1209 (2003). The Motion points out that constructive fraud is defined as an "unintentional deception or misrepresentation that causes injury to another." Canaj, Inc. v. Baker & Div. Phase III, 391 Md. 374, 421-422, 893 A.2d 1067, 1095 (2006) (emphasis added).

Defendants' Motion sets forth an analysis of each specific allegation of Count IV. Many of the allegations are the very allegations relied on with respect to other counts. For example, Plaintiffs again rely on the sale of the Triangle as a ground for constructive fraud. Complaint, ¶ 37. However, as established above and in the Motion, Riverbea had the right to sell the Triangle; its decision to do so is insulated by the business judgment rule; and Riverbea's individual officers and directors have no personal liability for the sale. Similarly, Plaintiffs again rely on allegations relating to the Club. Complaint, ¶ 37. As already established, however, there is nothing illegal about the Agreement with the Club. Neither the Triangle nor the Agreement with the Yacht Club form a basis for a claim of constructive fraud.

In their Motion, Defendants also argue that Plaintiffs' allegation that Riverbea and its directors mismanaged the shore erosion contract process and subsequent work fails as a matter of law because it is RCIA, not Riverbea, who has the legal responsibility to manage the shore erosion contract process and work relating to it. Defendants also argue that Plaintiffs' allegations that Riverbea and its directors breached their fiduciary duties by "neglect and unresponsiveness" or by a failure to "properly and timely" sign required approvals and permits for shore erosion control work are not, as a matter of law, allegations of "deception" or "misrepresentation." Finally, Defendants explain in their Motion that Plaintiffs' allegations relating to an alleged insistence by Riverbea that piers be constructed by a certain contractor or to Riverbea's threatened removal of illegal piers do not constitute allegations of "deception" or "misrepresentation" because Riverbea is the owner of Riviera Walk, Riverbea has the right to allow or disallow the construction of any and all piers, Riverbea owns all piers that extend from Riviera Walk, and Riverbea has the right to remove illegal piers.

In their Opposition, Plaintiffs once again fail to answer the arguments made in the Motion to Dismiss or for Summary Judgment. All Plaintiffs say is that the facts they have alleged "clearly constitute a breach by Riverbea and its members of their fiduciary duty to the individual owners in Riviera Beach." Opposition at 14. Plaintiffs' failure to respond to the legal arguments made by Defendants should be held squarely against them. Count IV fails to state a claim upon which relief can be granted because the allegations, even if they were true, do not constitute constructive fraud. Count IV should be dismissed in its entirety.

**E. COUNT V FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE PLAINTIFFS HAVE FAILED TO ALLEGE THE EXISTENCE OF A CONTRACT.**

In the Motion to Dismiss or for Summary Judgment, Defendants point out that Count V is a breach of contract count, yet it fails to allege the existence of a contract between the Plaintiffs and any of the Defendants. In their Opposition, Plaintiffs do not -- and cannot -- dispute that they are not parties to the 1961 deed or to any other "contract" with the Defendants. Instead, they argue that they have certain rights to use community property, that they have an equitable interest in the property, and that they have certain rights to enforce covenants. Opposition at 15-16. This is a *non sequitur*. Plaintiffs cannot recover for a breach of contract unless they allege the existence of a contract. Riverbea respectfully requests that Count V be dismissed in its entirety as to Riverbea.

**F. COUNT VI FOR UNJUST ENRICHMENT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE RIVERBEA HAD THE RIGHT TO SELL THE TRIANGLE AND RETAIN THE PROCEEDS OF THE SALE.**

Count VI for unjust enrichment alleges that if the sale of the Triangle is allowed to stand, then Riverbea should not be allowed to retain the proceeds. This Count rises or falls with this Court's determination as to whether Riverbea had the right to sell the Triangle. If Riverbea had the right to sell the Triangle, then, as the fee simple owner of it, Riverbea has the right to retain the proceeds. As argued in the Motion to Dismiss or for Summary Judgment, there is surely no basis for a finding that any of these Plaintiffs are entitled to the proceeds, a point never addressed by Plaintiffs. Count VI should be dismissed in its entirety.

**G. COUNT VII FOR AN ACCOUNTING FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE PLAINTIFFS HAVE NO RIGHT TO AN ACCOUNTING.**

In their Motion to Dismiss or for Summary Judgment, Defendants point out that a plaintiff is entitled to an accounting only when it appears that there are profits or other money

in which the plaintiff has a joint interest and for which the defendant refuses to account. Golub v. Cohen, 138 Md. App. 508, 772 A.2d 880, cert. den., 365 Md. 474, 781 A.2d 779 (2001). Defendants argue in the Motion that the Plaintiffs here have no right to or joint interest in any of Riverbea's funds.

Once again, Plaintiffs fail to respond to this argument, even while recognizing that they must show, to obtain an accounting, that there is money that "in equity and good conscience [belongs] to the plaintiff." Opposition at 16. Plaintiffs make no attempt at all to explain how they are entitled to money from the sale of property owned by Riverbea. This is because Plaintiffs are not entitled to Riverbea's funds. Count VII should be dismissed in its entirety for failure to state a claim upon which relief can be granted.

**H. COUNT VIII FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE IT IS UNLAWFUL TO MANDATE THAT RIVERBEA BE PROHIBITED FROM TAKING ACTION WITH RESPECT ITS PROPERTY WITHOUT THE CONSENT OF RCIA.**

Count VIII of Plaintiffs' Complaint has one request for permanent injunctive relief -- Plaintiffs request that this Court enter an order "permanently enjoining Defendant Riverbea Corporation from taking any independent action regarding use, control or sale of Community Property without the express consent of Plaintiff Riviera Beach Community Association, Inc. (sic)." Complaint at page 18, paragraph E.

As was argued in the Motion to Dismiss or for Summary Judgment, RCIA has no legal right to control property owned by Riverbea, and RCIA has no legal right to consent to the use, control, or sale of property owned by Riverbea. In their Opposition, Plaintiffs claim that Defendants are simply re-arguing standing. Opposition at 17. This argument is disingenuous. Defendants' argument is that even if RCIA has standing, it has no legal right to the relief sought. Plaintiffs cite no authority for the proposition that this Court may enter an

order declaring that RCIA may control property owned by another entity, Riverbea. Once again, Defendants respectfully suggest that there is no such authority.

Plaintiffs argue that injunctive relief is necessary "before Riverbea destroys all of the assets in Riviera Beach." Opposition at 17. This melodramatic allegation is false. Riverbea has not destroyed any assets in Riviera Beach, and Plaintiffs make no factual allegations to the contrary. All of Riverbea's assets are subject to any existing use restrictions of record, and, although Riverbea has no intention whatsoever of conveying any additional property, it should be noted that any such hypothetical conveyance would be subject to all restrictions of record. Riverbea lacks the power to "destroy all assets" of the community.

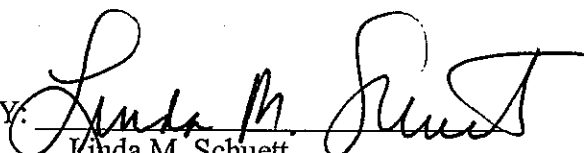
Count VIII fails to state a claim upon which permanent injunctive relief can be granted and, as such, judgment should be entered in favor of Riverbea on this Count.

#### **CONCLUSION**

This dispute between two factions of the Riviera Beach community should be resolved at the earliest possible time so as to bring certainty to future dealings between them. Riverbea had the right to sell the Triangle and has the right to retain the funds from that sale. Riverbea has the right and duty to maintain and control Riviera Walk and the playground, and RCIA plays no role in these functions. RCIA has the right and duty to oversee the shore erosion control funds and projects, and Riverbea plays no role in these functions other than the role granted to it by RCIA's bylaws. Riverbea has the right and duty to remove illegal piers from Riviera Walk. For all of the reasons set forth in the Motion to Dismiss or for Summary Judgment and this Reply Memorandum, Defendants' Motion should be granted.

Respectfully submitted,

LINOWES AND BLOCHER LLP

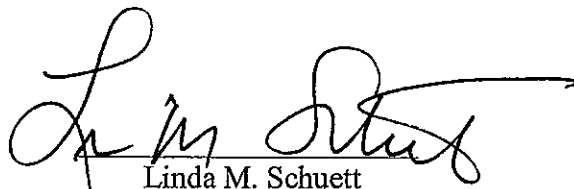
BY:   
Linda M. Schuett

One Park Place, Suite 585  
Annapolis, Maryland 21401  
(410) 268-0881  
lschuett@linowes-law.com

Counsel for Defendants, Riverbea  
Corporation, Robert Snyder, William Guizzardi,  
Brett Scheibe, and Edward Patrick Kiley

**CERTIFICATE OF SERVICE**

I CERTIFY on this 11<sup>th</sup> day of January 2010, that a copy of this document was mailed, postage prepaid, to Kathleen E. Byrne, Esquire, 213 Duke of Gloucester Street, Annapolis, Maryland 21401 and to Henry D. McGlade, Esquire, 1460 Governor Ritchie Highway #207, Arnold, Maryland 21012.

  
Linda M. Schuett