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End in Sight for IconBrickell-Type Condo Claims?

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Over five years ago, Florida's Third District Court of Appeal issued its decision in *IconBrickell Condominium No. Three Association, Inc. v. New Media Consulting, LLC*, 310 So. 3d 477 (Fla. 3d DCA 2020), sending shockwaves throughout the condominium industry. The Court held, among other things, that the condominium's declaration violated the Condominium Act by designating certain building components as "shared facilities" and incorporating them into a hotel unit, rather than the common elements.[1] Before *IconBrickell*, that type of designation was a widely-accepted way to structure a mixed-use condominium that included a hotel.

Attorneys at this firm quickly sounded the alarm, noting that *IconBrickell* undermined a fundamental understanding of condominium creation.[2] For years, hotel operators in mixed-use condominiums had assumed that declarations meant what they said, and many said that the hotel unit owners (not the condominium association) controlled "shared facilities," which intentionally included lobbies, hallways, and elevators. This is important because, for a "branded" project developed under a licensed name such as Ritz-Carlton, Four Seasons, or Fairmont, the hotel operator is contractually obligated to control the look, feel, and experience of the project. But under the Condominium Act, the association is responsible for controlling and maintaining the common elements. That is the underlying conflict.

Since *IconBrickell*, lower courts have attempted to apply the decision to other mixed-use condominiums, such as the one in *Central Carillon Beach Condominium Ass'n, Inc. v. Carillon Hotel, LLC, et al.*, Case Nos. 2016-011172-CA-01 and 2016-007886-CA-01 (Fla. 11th Cir. Ct. Jan. 30, 2023).[3] But *Carillon* has been a case study in the difficulty of applying *IconBrickell*—not only deciding which parts of a condominium must be common elements within association control, but also how to reform an existing declaration.[4] Most of the other well-known disputes involving mixed-use condominiums are projects that failed or faced significant financial distress. The uncertainty raised by these other cases led many to question the viability of these projects going forward.

But more recently, the tide appears to have shifted back in favor of hotel unit owners. In 2025, Florida's Fourth District Court of Appeal ruled that *IconBrickell*-style challenges must be brought

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[1] New Appellate Case Raises Issues For Mixed Use Developments in Florida | Insights & Events | Bilzin Sumberg.

[2] Enter the Twilight Zone: The IconBrickell Case and Mixed-Use Condominiums | Insights & Events | Bilzin Sumberg.

[3] Hotel Condominiums - An Endangered Species | Florida Real Estate Development Digest | Insights & Events | Bilzin Sumberg.

[4] Condominium Law Continues to Evolve | Florida Real Estate Development Digest | Insights & Events | Bilzin Sumberg. Moreover, litigation in the *IconBrickell* case itself remains on-going to this day.

within three years of the recording of the condominium declaration. *Gallery One Condo. Association, Inc. v. Terrace Gallery, LLC*, 415 So. 3d 1076, 1080 (Fla. 4th DCA 2025) (also holding that an additional five-year statute of limitations would apply in the alternative). This was not a disagreement with *IconBrickell* on the merits. Instead, *Gallery One* simply found that claims like the ones in *IconBrickell* must be brought soon after the creation of the condominium.

The Third District has not yet had the opportunity to agree or disagree with the Fourth District's decision in *Gallery One*. Additionally, no other District Courts in Florida (let alone the Florida Supreme Court) have weighed in on the issue yet. However, at least one trial court has applied *Gallery One* to another dispute involving a hotel operator in a mixed-use condominium.

In a case handled by Bilzin Sumberg within Miami-Dade's complex business division, the Circuit Court found that an *IconBrickell* claim was time-barred because of the same three-year statute of repose applied in *Gallery One*. The Circuit Court also ruled that a purported agreement between the defendant hotel unit owner and the plaintiff residential unit owners—an agreement that supposedly converted portions of the hotel unit's shared facilities into common elements—was unenforceable. The Circuit Court reasoned that a minority of residential unit owners could not enter into a contract that would impose legal obligations on all residential unit owners without their consent.

The past few years have been quite turbulent for condominium law. The Legislature and courts have grappled with new regulations in the wake of the Surfside tragedy, as well as complex condominium terminations such as the one in *Avila v. Biscayne 21 Condominium, Inc.*, 417 So. 3d 434 (Fla. 3d 2025). Meanwhile, disputes over money and management between and among condominium associations and unit owners remain a staple of Florida litigation, in one form or another. But as far as *IconBrickell* in particular goes, the courts might be putting these types of challenges in their rearview mirror, both because newer mixed-use projects are structured differently and most (if not all) condominiums similar to the one in *IconBrickell* are more than three years old.