

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY FLORIDA**

KIRK BROWN,

Plaintiff,

vs.

JOSEPH RENDA,

Defendant,

Case No.

COMPLAINT

The plaintiff, Kirk Brown, sues the defendant, Joseph Renda, and in support of the Complaint alleges the following:

PARTIES, JURISDICTION AND VENUE

1. This is an action for injunctive relief for violations of the Declaration and Condominium Act.
2. This Court has jurisdiction pursuant to Florida Statute Section 26.012(2)(c).
3. Plaintiff, Kirk Brown ("Brown"), is a resident of Marion County, Florida and otherwise sui juris.
4. Defendant, Joseph Renda ("Renda"), is a resident of Marion County, Florida, over the age of eighteen (18) and otherwise sui juris.
5. Venue is proper in Marion County ("County") since the Defendant resides in the County and since all acts and events related to this matter occurred in the County.
6. All conditions precedent to the filing and maintenance of this action have been performed, occurred or otherwise waived.

VIOLATION OF FLORIDA STATUTE SECTION 718.303

(Injunctive Relief)

7. The Landings of the Withlacoochee Condominium is a residential condominium located in Marion County, Florida (the "Condominium").

8. Brown is a member of the Landings of the Withlacoochee Condominium Association, Inc. ("Association") and record owner of Unit A-13 at the Condominium.

9. Renda is a member of the Association and record owner of Unit A-33 at the Condominium ("Unit"), which is located above Brown's unit.

10. The Condominium, the Association, Brown and Renda are governed by the terms of the Amended and Restated Declaration of Condominium ("Declaration"), Articles of Incorporation, By-Laws and Rules and Regulations as they are amended from time to time. Collectively, these documents are referred to as the "Governing Documents".

11. The Governing Documents and the Condominium Act impose certain restrictions and obligations that Renda must comply with.

12. As set forth in Section 14 (B) of the Declaration, maintenance, repair and replacement to the units shall be subject to the rules and regulations of the Association.

13. As set forth in Rule XIII of the Rules and Regulations, after January 11, 2014 floor covering replacements on floors 2 & 3 must be approved by the board. Owners shall submit acceptable documentation that the proposed floor covering meets a minimum Impact Insulation Class (IIC) rating of at least 65.

14. As set forth in Section 25 of the Declaration, a unit owner is bound by and subject to all of the provisions of the Condominium Act, this Declaration, the Articles of Incorporations and the By-Laws.

15. As set forth in Section 718.303(a) of the Condominium Act, each unit owner shall be governed by, and shall comply with the provisions of this chapter, the declaration, the documents creating the association, and the association bylaws. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against a unit owner.

16. In 2017, Renda replaced the floor covering in his Unit (the "Replacement").

17. On or before the date of the Replacement, Renda did not:

- A. seek or obtain approval of the Replacement from the Board of Directors in compliance with the Governing Documents;
- B. submit any documentation demonstrating that the proposed floor covering for the Replacement meets a minimum Impact Insulation Class (IIC) rating of at least 65; or
- C. use or install a minimum Impact Insulation Class (IIC) rating of at least 65.

18. After the Replacement occurred, Renda, who does not reside in the Unit, leased the Unit to a third party.

19. The Unit is now occupied by a third party ("Tenant").

20. After the Unit was leased, Brown, who is a snowbird and resides seasonally in his unit at the Condominium, returned to Florida to use and enjoy his unit at the Condominium.

21. When Brown returned in or about December 2017, he began hearing loud noises coming through the flooring in the Unit whenever it was began used by the Tenant.

22. The loud noises interfere with Brown's use and enjoyment of his unit.

23. In response to the loud noises, Brown complained to the Tenant and to Renda in or about December 2017.

24. Brown asked Renda whether he had installed new floors and asked Renda whether he had complied with the Association's requirements for sound proofing.

25. Renda stated that he did and had met the sound proofing requirements.

26. However, the loud noises continue.

27. To date, Renda continues to remain in non-compliance with the Governing Documents and Condominium Act since he has never obtained approval by the Board of Directors for the Replacement, submitted any documentation demonstrating that the proposed floor covering meets a minimum Impact Insulation Class (IIC) rating of at least 65, or installed a minimum Impact Insulation Class (IIC) rating of at least 65 for his floor covering.

28. As a direct and proximate cause of Renda's violation and continued violation of the Governing Documents and Condominium Act, Brown is in need of an injunction protecting Brown, his family, guests and invitees from further violation.

29. Brown is without an adequate remedy at law inasmuch as a money judgment cannot make Brown whole to redress Renda's violations of the Declaration and the Condominium Act.

30. Brown has retained the undersigned counsel and is obligated to pay the attorneys' fees and costs incurred in the prosecution of this action. Pursuant to Florida Statute Section 718.303 and the Declaration, Brown is entitled to recover his prevailing party attorneys' fees and costs.

31. A copy of the applicable portions of the Governing Documents are attached as Exhibit "A."

WHEREFORE, the plaintiff, Kirk Brown, respectfully requests that this Honorable Court enter a preliminary and permanent injunction requiring Defendant, Joseph Renda, to:

- A. Remove the flooring covering in his Unit restoring it to its prior condition;
- B. Apply for Board Approval to replace the flooring covering in his Unit and submit documentation demonstrating that the proposed flooring has a minimum Impact Insulation Class (IIC) rating of at least 65 and, if approved, install the approved flooring with a minimum Impact Insulation Class (IIC) rating of at least 65;
- C. Award reasonable attorneys' fees and court costs incurred in the prosecution of this action pursuant to Florida Statute Section 718.303, and
- D. For such other and further relief deemed just and proper.

Dated: April 6, 2018

Respectfully submitted,

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property stored elsewhere on the condominium property, and including all additions and improvements made by him to his condominium unit other than fixtures, installations or additions initially installed or replacements thereof in accordance with the original condominium plans and specifications, and his personal liability to the extent not covered by the liability insurance for all of the unit owners obtained as part of the common expenses as above provided.

L. In undertaking the responsibilities set forth in this Article, the Association is hereby designated and shall be the attorney-in-fact for all unit owners for the purpose of purchasing and maintaining such insurance, including but not necessarily limited to, the collection and appropriate disposition of the proceeds thereof, the negotiations of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish the purposes of this Article.

14. MAINTENANCE, REPAIRS AND REPLACEMENT

A. Each unit owner shall furnish at his own expense and be responsible for all of the maintenance, repairs and replacements within his own unit; provided, however, that such maintenance, repairs and replacements as may be required for the bringing of water, gas and electricity to the unit shall be furnished by the Association as part of the common expenses. Maintenance, repairs and replacements of the common elements shall be furnished by the Association as part of the common expenses. The Association may provide in its rules and regulations for ordinary maintenance and minor repairs and replacements to be furnished to units by Association personnel at common expense.

B. If, due to the negligent act or omission of a unit owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor of such unit owner, damage shall be caused to the common elements or to a unit or

units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such unit owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association. Maintenance, repairs and replacements to the common elements or the units shall be subject to the rules and regulations of the Association.

C. To the extent that equipment, facilities and fixtures within any unit or units shall be connected to similar equipment, facilities or fixtures affecting or serving other units or the common elements, then the use thereof by the individual unit owners shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors, or of the manager or managing agent for the building, shall be entitled to reasonable access to the individual units as may be required in connection with maintenance, repair or replacement of the common elements or any equipment, facilities or fixtures affecting or serving other units or the common elements.

D. Each unit owner shall be responsible for the maintenance, repair and replacement of all windows of his unit and also the doors leading onto the balconies and stairways, if any, adjacent to his unit.

E. The Association has the irrevocable right to access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or for making emergency repairs necessary to prevent damage to common elements or to another unit or units.

F. The Association shall have the authority to grant permits, licenses and easements over the common areas, and to move or modify the same, for utilities, ingress and egress and for other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

THE LANDINGS OF THE WITHLACOOCHEE HOMEOWNERS ASSOCIATION, INC.
ARTICLE VI - AUTHORITY OF DIRECTORS

Section I - Rules and Regulations: The Board of Directors is authorized to adopt or to amend rules and regulations not inconsistent with the Declaration of Condominiums and the Articles of Incorporation of the Landings of the Withlacoochee Condominium Association, Inc., governing the manner of use of the units and appurtenances, the common elements, and all the facilities owned or controlled by the Association. The By-Laws and Condominium documents are the final rules by which The Landings of the Withlacoochee are governed. All owners, guests, and renters shall abide by the rules as listed. Fines for violations of the following rules shall be ten dollars (\$10.00) per day per violation, paid by the owner).

I - All homeowners, renters and guests are expected to observe ALL posted rules. This applies to signs in the pool area, in the picnic area, parking areas, and on the docks. The rules governing hours, safety and use of the pool and jacuzzi are to be strictly adhered to.

II - There SHALL BE NO trespassing on the property adjacent to The Landings or on boats that are tied to the docks.

III - All homeowners, renters, and guests are to leave clean any areas that they use so the next person(s) can enjoy the area, especially in the picnic area (tables, barbecues, and sinks) and the fish cleaning area. Loud noises (including washers and dryers) or even happy noises such as laughing and talking shall be quieted after 11:00 PM.

IV - Laundry and towels should be hung on rods in the porch area of each unit and not on the railings or in areas that are open to public view. Trash/garbage is to be taken directly to the dumpster and not stored temporarily on patios or balconies.

V - All personal property including, but not limited to bicycles, toys, barbecue grills, plants, furniture, decorations, etc. must not be placed on the common walkways or in any area that would impede foot traffic around the complex. Barbecue grills are not to be used on unit patios or balconies. Dead plants should be removed as soon as possible. Plants of any kind, hanging or otherwise, are not permitted along the eaves or outside the railings. Furniture, carpet, or decorations hanging or exposed on patios/balconies, are not to be such that they detract from a generally uniform overall appearance of the buildings, or emit noises that can be heard at other units.

VI - No commercial signs, realty signs, or advertising of any nature including telephone numbers of such business shall be permitted on the common property of the Landings. It shall be the responsibility of each unit owner to remove or have removed such signs or advertising.

VII - No "FOR SALE" or "FOR RENT" signs are allowed to be posted at the individual units. A bulletin board has been provided at the location designated by the Association for such signs. Signs posted on the bulletin board shall be either 3"x 5" or 4"x6" in size and white in color. Signs can be handwritten, printed, or typed.

VIII - All unit owners shall be responsible to the Association for the actions of, or damages caused by, renters and/or guests in their unit. Damages in the common areas or on the grounds shall be repaired and the cost of repairs will be billed to the owner.

IX - The Board shall be notified of the names, address, phone number, and timeframe each time usage/occupancy of their unit is transferred to others prior to their arrival. Owners, guests, and tenants are not to invite guests to use the Landing's facilities in such numbers as to interfere with the use and enjoyment of others. Owners and/or tenants shall accompany guests when guests are using the facilities. Owners, tenants, and their guests shall not give permission to non-owners or non-tenants to use facilities at will; nor can unit owners, guests, or tenants give customers of any commercial enterprise, owned or otherwise, permission to use the Landing's facilities. All owners should help guard against unauthorized persons or trespassers being on the property.

X - Owners with a renter or guest must provide these Rules and Regulations to them. Those renters/guests who knowingly and with intent, violate the rules or create a disturbance or nuisance at the Landings, and who upon notice, fail to correct said non-compliance, will be required to leave the premises immediately without recourse against the Association.

XI - Owners may have two (2) pets (under twenty-four pounds each). Dogs and cats shall be kept on leashes at all times when not in owner's condo unit. No pets are allowed in the pool/jacuzzi area. Due to the close proximity of condo units, all pet owners shall maintain reasonable pet control, such as noise, no body waste on the Landing's property, etc.

XII - Attachments of any kind to common properties are not allowed without prior Board approval (e.g. extension cords to the docks, adding screen porches, etc.).

XIII - After January 11, 2014 floor covering replacements on floors 2 & 3 must be approved by the Board. Owners shall submit acceptable documentation that the proposed floor covering meets a minimum Impact Insulation Class (IIC) rating of at least 65.

XIV - Fines of ten dollars (\$10.00) per day shall accrue for declarations, bylaws, or rules non-compliances. Late fee payments received after the 10th of the month shall be the maximum under Florida Chapter 718.303 or its successor.

23. SEVERABILITY

If any provision of this Declaration, the Articles of Incorporation or By-Laws shall be held invalid, it shall not affect the validity of the remainder of the Declaration, Articles and the By-Laws.

24. USE RESTRICTIONS

A. Single Family Residence. Units shall be utilized only for purposes of single family residential use.

B. Leases. No lease or rental of a unit shall be made for a period of less than one (1) week and all lease or rental agreements shall be in writing.

C. Pets. No unit owner shall be entitled to keep or maintain a pet in excess of twenty-four (24) pounds upon the premises. No unit owner shall be entitled to have more than two (2) pets and dogs shall be kept on leashes at all times when not in the condominium unit of the owner.

25. RIGHTS AND OBLIGATIONS

A. Unit Owners. The provisions of this Declaration, the Articles of Incorporation and the By-Laws, and the rights and obligations established thereby, shall be deemed to be covenants running with the land so long as the property remains subject to the provisions of the Condominium Act and shall inure to the benefit of and be binding upon each and all of the unit owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees, and mortgagees. By the recording of the acceptance of a deed conveying a unit or any interest therein, or any ownership interest in the property whatsoever, the person to whom such unit or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of the Condominium Act, this Declaration, the Articles of Incorporation and the By-Laws.

B. Mortgagees. Upon written request to the Association, identifying the name and address of the holder, insurer