

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, STATE OF FLORIDA
CIVIL DIVISION**

KIRK BROWN

Plaintiff(s),

Case number: 18-CA-000726AX
Division:

v.

JOSEPH RENDA,

Defendant(s)

JOSEPH RENDA

Third-Party Plaintiff

v.

The Landings of the Withlacoochee Condominium
Association, Inc., a Florida corporation

Third-Party Defendant

THIRD-PARTY COMPLAINT AND SUPPORTING MEMORANDUM OF LAW

COMES NOW Defendant/Third-Party Plaintiff JOSEPH RENDA (hereinafter “REND”) by and through the undersigned counsel and pursuant to Rules 1.180 Fla. R. Civ. P. and hereby files this Third-Party Complaint against THE LANDINGS OF THE WITHLACOOCHEE CONDOMINIUM ASSOCIATION, INC., a Florida corporation (hereinafter “ASSOCIATION”) seeking indemnification, or in the alternative, contribution on a proportionate basis with regard to claims brought against RENDA by KIRK BROWN (hereinafter “Plaintiff”) and in support thereof would state as follows;

PRELIMINARY STATEMENT

1. Plaintiff KIRK BROWN (hereinafter “Plaintiff”) has filed a Complaint alleging a covenant violation of the Amended and Restated Declaration of Condominium for The Landings of the Withlacoochee, a Condominium (hereinafter “Declaration”) which is located in Marion County, Florida. Both RENDA and Plaintiff are presently owners and as such, association members in the Association.

2. Without admitting any of the allegations against him, RENDA incorporates by reference all factual allegations made in paragraphs 1 – 31 of Plaintiff’s Complaint. A copy of the Plaintiff’s Complaint is attached hereto as **Exhibit “A.”**

JURISDICTION AND VENUE

3. Venue is proper in Marion County, Florida pursuant to §47.011 Fla. Stat. because, *inter alia*, the causes of action alleged herein accrued in Marion County, Florida, and the subject matter of this dispute arises from property which is located in Marion County, Florida.

4. As provided in Rule 1.180 Fla. R. Civ. P., this Honorable Court has jurisdiction over these third-party claims.

5. Defendant/Third-Party Plaintiff RENDA is *sui juris* and is a resident of Marion County, Florida.

6. On information and belief, Third-Party Defendant, ASSOCIATION is and was, at all times relevant to this action, the governing body that is responsible for the operation and management of The Landings of the Withlacoochee, a Condominium (hereinafter “Condominium”) and regularly doing business in Marion County, Florida.

7. The Declaration is filed for record in Official Records Book 1274 beginning at Page 203 of the Public Records of Marion County, Florida.

8. All conditions precedent to the bringing of this action have been fulfilled, have been waived, or have occurred.

GENERAL ALLEGATIONS

9. The gravamen of Plaintiff's Complaint is an alleged covenant violation related to the replacement of the floor coverings in Defendant/Third-Party Plaintiff RENDA's unit, and the alleged noise related thereto. The Plaintiff has alleged that RENDA failed seek and obtain the approval of ASSOCIATION for his improvements to the unit.

10. Defendant/Third-Party Plaintiff RENDA desired to undertake certain renovations to his unit, which consisted of interior modification and the replacement of the floor coverings in the unit.

11. Article 3 Paragraph B of the Declaration states that ASSOCIATION or its assigns is "responsible for the operation, administration and management of the [C]ondominium."

12. Article 3 Paragraph J of the Declaration states that the Unit is that "portion of the condominium property which is subject to private ownership as further defined in Article 4 hereof."

13. Article 4 Paragraph B of the Declaration states that the unit consists of, among numerous other things, the "floors and ceilings, consisting of paint, plaster, carpeting, tiles and all other finishing materials affixed or installed as a part of the physical structure of the unit..."

14. Article 14 Paragraph A of the Declaration provides that "[e]ach unit owner shall furnish at his own expense and be responsible for all maintenance, repairs and replacements within his own unit..."

15. Article 14 Paragraph B of the Declaration provides that "[m]aintenance, repairs and replacements to the common elements or the units shall be subject to the rules and regulations of the Association."

16. "A declaration of condominium possesses 'attributes of a covenant running with the land' and operates as a contract among unit owners and the association, 'spelling out mutual rights and obligations of the parties thereto.'" *Cohn v. The Grand Condo. Ass'n, Inc.*, 62 S.3d 1120 (Fla. 2011) (citing *Woodside Village Condominium Ass'n v. Jahren*, 806 S.2d 452, 456 (Fla. 2002)).

17. Pursuant to Rule XIII of the Rules and Regulations, Defendant/Third-Party Plaintiff RENDA sought and received the approval of the Board of Directors of ASSOCIATION, for the replacement of the floor coverings in his unit. This approval is evidenced in an affidavit of the President of the Board of Directors for ASSOCIATION, previously filed in this action.

18. The desired renovations proceeded to a conclusion with the approval of ASSOCIATION.

19. §718.303(1) Fla. Stat. states that “[e]ach unit owner, each tenant and other invitee, and each association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which shall be deemed expressly incorporated into any lease of a unit. 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...”

COUNT – I
DECLARATORY RELIEF

20. Defendant/Third-Party Plaintiff RENDA hereby realleges and incorporates the allegations set forth in paragraphs 1 through 19 above, as though fully set forth herein.

21. Defendant/Third-Party Plaintiff RENDA is uncertain with respect to his rights, status, and use of his unit in the Condominium.

22. This uncertainty arises from what was perceived as the full compliance with the Declaration and the Rules and Regulations of the Condominium has now resulted in an action being brought against Defendant/Third-Party Plaintiff RENDA, by another unit owner and Association member.

23. All of Defendant/Third-Party Plaintiff RENDA’s renovations, which consisted of interior modification and the replacement of the floor coverings, were done with the consent or approval of ASSOCIATION.

24. Pursuant to Article 3 Paragraph B of the Declaration the Association or its assigns is “responsible for the operation, administration and management of the [C]ondominium.” This includes the duty to enforce and adhere to the terms of the Declaration.

25. According to the allegations in Plaintiff’s Complaint, the renovations, which were approved by the Association, and undertaken by Defendant/Third-Party Plaintiff RENDA are not in conformity with the governing documents of the Condominium. As such, ASSOCIATION has potentially breached, and continues to breach, its duties under the Declaration, to operate, administer and manage the Condominium.

WHEREFORE, the Defendant/Third-Party Plaintiff RENDA seeks entry of a final judgment for the following:

- A. Declaring that the renovations undertaken by Defendant/Third-Party Plaintiff RENDA were approved by ASSOCIATION, and in conformity with the governing documents of the Condominium.
- B. Issuing an order requiring the dismissal with prejudice of the Plaintiff’s action;
- C. Granting Defendant/Third-Party Plaintiff RENDA a judgment against the Third-Party Defendant ASSOCIATION for court costs, interest (if any), and attorneys’ fees pursuant to §718.303 Fla. Stat.; and
- D. Granting such other and further relief as this Honorable Court deems both just and proper

COUNT -II
BREACH OF STATUTORY DUTY

26. Defendant/Third-Party Plaintiff RENDA hereby realleges and incorporates the allegations set forth in paragraphs 1 through 19 above, as though fully set forth herein.

27. Pursuant to Chapter 718 Fla. Stat., commonly referred to as the “Condominium Act” (hereinafter “Act”) ASSOCIATION is required to maintain and provide access to the records of the Condominium, for the benefit of the unit owners, being members of the Association.

28. Plaintiff’s Complaint asserts at paragraph 27 that Defendant/Third-Party Plaintiff RENDA never sought or obtained the required approval of ASSOCIATION for the renovations of his unit, which consisted of interior modification and the replacement of the floor coverings.

29. The approval of ASSOCIATION for the renovations would be such a record of the Association, that would be required to be maintained pursuant to the Act.

30. ASSOCIATION has failed to maintain and provide access to the records of the Condominium, for the benefit of the unit owners, being members of ASSOCIATION, and as a result of same, Defendant/Third-Party Plaintiff RENDA has been damaged including but not limited to having to retain the undersigned to assist in this matter and to bring this cause of action.

WHEREFORE, the Defendant/Third-Party Plaintiff RENDA seeks entry of a final judgment for the following:

- E. Declaring that the affidavit filed in this action is a record of ASSOCIATION, and ordering that it be maintained for the benefit of the unit owners, being members of ASSOCIATION.
- F. Issuing an order requiring the dismissal with prejudice of the Plaintiff’s action;
- G. Granting Defendant/Third-Party Plaintiff RENDA a judgment against the Third-Party Defendant ASSOCIATION for court costs, interest (if any), and attorneys’ fees pursuant to §718.303 Fla. Stat.; and
- H. Granting such other and further relief as this Honorable Court deems both just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been sent via the ePortal to: Paul Kim, Esq., of Glazer & Sachs, P.A., 3113 Stirling Road, Suite 201, Hollywood, Florida 33312, paul@condo-laws.com on 18 May 2018.

/s/ John N. Redding, Esq.

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