

**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-000727AX
Division:

v.

STEVEN W. VEHMEIER and
GEORGANN VEHMEIER,

Defendant(s)

STEVEN W. VEHMEIER and
GEORGANN VEHMEIER

Third-Party Plaintiff

v.

THE LANDINGS OF THE WITHLACOOCHEE
CONDOMINIUM ASSOCIATION, INC., a
Florida corporation

Third-Party Defendant

AMENDED THIRD-PARTY COMPLAINT

COMES NOW Defendants/Third-Party Plaintiffs STEVEN W. VEHMEIER and GEORGANN VEHMEIER (hereinafter collectively “VEHMEIER”) by and through the undersigned counsel and pursuant to Rules 1.180 Fla. R. Civ. P. and hereby files this Amended 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 VEHMEIER 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 VEHMEIER and Plaintiff are presently owners and as such, association members in the Association.

2. Without admitting any of the allegations against them, VEHMEIER incorporate by reference all factual allegations made in paragraphs 1 – 25 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. Defendants/Third-Party Plaintiffs VEHMEIER are *sui juris* and are residents 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 installation of a replacement for their drier vent and alleged electrical wiring in Defendants/Third-Party Plaintiffs VEHMEIER's unit. The Plaintiff has alleged that VEHMEIER failed seek and obtain the approval of ASSOCIATION for their alteration to the common elements of the Condominium as the drier vent is installed in an outside wall.

10. According to Plaintiff, Defendant/Third-Party Plaintiff VEHMEIER undertook certain renovations to his unit resulting in aa alleged, unapproved material alteration to the common elements of the Condominium, which consisted of the installation of a replacement for their existing, previously approved drier vent.

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 D of the Declaration states that the Common Elements are "portions of the condominium property not included within any unit..."

13. Article 3 Paragraph I of the Declaration states that the Condominium Property "includes all land in the condominium and all improvements thereon..."

14. 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."

15. Article 4 Paragraph B of the Declaration states that the unit consists of, among numerous other things, "all immediately visible fixtures, mechanical systems and equipment installed for the sole and exclusive use of the unit, commencing at the point of disconnection from the structural body of the condominium building and from the utility lines or installations constituting a part of the overall systems designated for the service of any particular unit..."

16. Article 5 Paragraph A2 further defines the Common Elements as "[a]ll parts of the improvements which are not contained within the units, including the foundations, roof,

floors, ceilings, perimeter walls, load bearing interior walls and partitions, slabs, hallways, entrances and exits or communication ways, pipes, wire, conduits, air ducts and utility lines, and the space actually occupied by all of these items.”

17. 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.”

18. Article 15 of the Declaration provides that “[n]o alterations to any common elements, or additions or improvements thereto, shall be made by any unit owner without the prior written approval of the Association.”

19. “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)).

20. The replacement for their drier vent was not an unapproved alteration to the common elements of the Condominium as the drier vent was a replacement of one previously installed, and previously approved by the ASSOCIATION.

21. Upon information and belief, there a number of units in the Condominium that have existing drier vents the same, or similar as the one installed on the unit owned by Defendants/Third-Party Plaintiffs VEHMEIER.

22. Should there be no evidence of an approval for the drier vent installed on the unit owned by Defendants/Third-Party Plaintiffs VEHMEIER, as there are a great number of existing drier vents the same, or similar as the one installed on the unit owned by Defendants/Third-Party Plaintiffs VEHMEIER the ASSOCIATION has waived and is therefore estopped from enforcing this covenant violation.

23. §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

24. Defendant/Third-Party Plaintiff VEHEMIER hereby reallege and incorporate the allegations set forth in paragraphs 1 through 23 above, as though fully set forth herein.

25. Defendants/Third-Party Plaintiffs VEHEMIER are uncertain with respect to their rights, status, and use of their unit in the Condominium.

26. This uncertainty arises from whether the replacement of an existing, approved drier vent, is an alteration to the common elements of the Condominium as the drier vent is installed in an outside wall of the Condominium and the alleged alteration of the electrical wiring within their unit which has now resulted in an action being brought against Defendants/Third-Party Plaintiffs VEHEMIER, by another unit owner and Association member.

27. 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.

28. According to the allegations in Plaintiff’s Complaint, the replacement of an existing, approved drier vent, and alleged alteration to the wiring within the unit undertaken by Defendants/Third-Party Plaintiffs VEHEMIER are unapproved alterations to the common elements 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 Defendants/Third-Party Plaintiffs VEHMEIER seek entry of a final judgment for the following:

- A. Declaring that the replacement of an existing, approved drier vent undertaken by Defendants/Third-Party Plaintiffs VEHMEIER was approved by ASSOCIATION, and in conformity with the governing documents of the Condominium.
- B. Declaring that the wiring within the unit owned by Defendants/Third-Party Plaintiffs VEHMEIER is not a common element of the Condominium and as such no approval is necessary regarding any alteration thereto.
- C. Issuing an order requiring the dismissal with prejudice of the Plaintiff's action;
- D. Granting Defendants/Third-Party Plaintiffs VEHMEIER a judgment against the Third-Party Defendant ASSOCIATION for court costs, interest (if any), and attorneys' fees pursuant to §718.303 Fla. Stat.; and
- E. Granting such other and further relief as this Honorable Court deems both just and proper.

COUNT -II

BREACH OF STATUTORY DUTY

27. Defendants/Third-Party Plaintiffs VEHMEIER hereby reallege and incorporate the allegations set forth in paragraphs 1 through 23 above, as though fully set forth herein.

28. 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.

29. Plaintiff's Complaint asserts at paragraph 19 that Defendants/Third-Party Plaintiffs VEHMEIER never sought or obtained the required approval of ASSOCIATION for the drier vent or alleged electrical wiring in and on their unit.

30. The approval of ASSOCIATION for the installation of the original drier vent would be such a record of the Association, that would be required to be maintained pursuant to the Act.

31. 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, Defendants/Third-Party Plaintiffs VEHMEIER have 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 VEHMEIER seeks entry of a final judgment for the following:

- A. Issuing an order requiring ASSOCIATION to produce and provide the approval for the drier vent alteration on the unit owned by Defendants/Third-Party Plaintiffs VEHMEIER, and ordering that these records be maintained for the benefit of the unit owners, being members of ASSOCIATION.
- B. Issuing an order requiring the dismissal with prejudice of the Plaintiff's action;
- C. Granting Defendant/Third-Party Plaintiff VEHMEIER 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.

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 and Shawn G. Brown, Esq., of Frazier & Brown, 202 South Rome Avenue, Suite 125 Tampa, Florida 33606, shawn@frazierbrownlaw.com on 18 June 2018.

/s/ John N. Redding, Esq.

John N. Redding, Esq.

John@jrtampalaw.com

FBN: 659983

Aleksandra I. Jagiella, Esq.

Aleks@jrtampalaw.com

FBN: 19057

REDDING & ASSOCIATES, P.A.

113 South MacDill Avenue, Suite A

Tampa, Florida 33609

Telephone 813.258.4401

Facsimile 813.871.3299

Counsel for VEHMEIER

UNOFFICIAL
DOCUMENT